



M E M O R A N D U M

**City of Austin
Financial Services Department
Purchasing Office**

DATE: June 14, 2019
TO: Memo to File
FROM: Georgia Billela, Procurement Specialist III
RE: MA 2200 NA190000166

This Master Agreement Contract was created and administered by Austin Water. All original documents are located with the department. The Purchasing Office is not responsible for any procurement action for this Master Agreement Contract other the creation of the payment mechanism for accounting purposes.

| BEAU THERIOT COMANCHE CANYON PRESERVE LANDS | | | | |
|---|--------------------|---------------|--------------------|---------|
| 2019 BUDGET | | | | |
| | | | | |
| EXPENSES: | 2019 | | | |
| ACI Budget | \$45,000 | | | |
| Fencing and Maintenance | \$300 | | | |
| Property Tax | \$50 | | | |
| Tax Return, Legal Fees and Accounting | \$9,000 | | | |
| Bank Fees | \$150 | | | |
| Insurance | \$2,500 | | | |
| | <u>\$57,000</u> | | | |
| | | | | |
| | Annual | Acct | Quarterly | |
| REVENUE: | Billings | Name | Billings | |
| Villa Montana - HOA | \$21,645.57 | HOA | \$5,411.39 | 96 lots |
| MiraSol HOA | \$6,764.24 | MIRASOL | \$1,691.06 | 30 lots |
| Comanche Canyon East Condos | \$3,787.97 | CCC | \$946.99 | Condos |
| Comanche Canyon East Commercial | \$1,871.44 | CCE | \$467.86 | Office |
| Comanche Canyon West Commercial | \$5,411.39 | WEST | \$1,352.85 | Retail |
| Oasis - Theriot Interests #1,LP | \$1,803.80 | OASIS | \$450.95 | Retail |
| Treasury - Theriot Retail | \$112.74 | TREASURY | \$28.19 | Retail |
| Office & Warehouse -Theriot Retail | \$112.74 | TREASURY | \$28.19 | Retail |
| Beau, Inc. - Condos | \$947.00 | BI | \$236.75 | Condos |
| City of Austin | | | | |
| Area 3 | \$12,175.63 | City | \$3,043.91 | Area 3 |
| Area 4 | <u>\$2,367.48</u> | <u>City-4</u> | <u>\$591.87</u> | Area 4 |
| | | | | |
| | <u>\$57,000.00</u> | | <u>\$14,250.00</u> | |
| | | | | |
| | | | | |
| Budget | \$57,000 | | | |

RESOLUTION NO. 20071213-081

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

Council authorizes the City Manager to negotiate and execute all documents necessary to purchase approximately 95 acres located at the corner of RM 620 and Bullick Hollow for a potential site for Water Treatment Plant No. 4 using September 1984 Proposition 4 Bond Funds.

BE IT FURTHER RESOLVED:

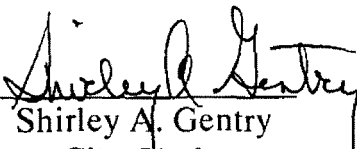
Council authorizes the City Manager to continue negotiations for purchase of backup site for Water Treatment Plant No. 4 using September 1984 Proposition 4 Bond Funds.

BE IT FURTHER RESOLVED:

Council directs the City Manager to make full presentations regarding the 95 acre site to the Environmental Board and the Water & Wastewater Commission.

ADOPTED: December 13, 2007

ATTEST:


Shirley A. Gentry
City Clerk

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

CERTIFICATE OF AUTHORITY

BEFORE ME, the undersigned authority, on this day personally appeared TOBY HAMMETT FUTRELL, who upon her oath made the following statement:

My name is Toby Hammett Futrell. I am the same person who, on May 1, 2002, assumed the office and duties of City Manager for the City of Austin, Texas, as authorized by the City Council.

GENERAL AUTHORITY

I authorize the following individuals to execute any and all instruments in writing, except instruments withdrawing money from depositories, or employment offers for executive level city staff, including an assistant director or officer, for and on behalf of the City of Austin as my act and deed:

| Name: | Title: |
|---------------------|------------------------|
| Laura Huffman | Assistant City Manager |
| Michael C. McDonald | Assistant City Manager |
| Rudy Garza | Assistant City Manager |
| Bert Lumbreras | Assistant City Manager |
| Kristen Vassallo | Chief of Staff |

DEPOSITORY WITHDRAWALS

I authorize the following individual to execute any and all instruments withdrawing money from the City's depositories:

| Name: | Title: |
|-----------------|---|
| John Stephens | Director, Financial & Administrative Services |
| Vickie Schubert | Deputy Director, Financial & Administrative Services |
| Leslie Browder | Deputy Director, Financial & Administrative Services |

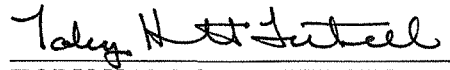
The authority granted in this certificate of authority is in addition to and in formal recognition of the verbal authority in effect from May 1, 2002. This instrument specifically recognizes those actions by the named individuals since May 1, 2002, for or on my behalf, and specifically validates those actions by reference.

I request and authorize any person to honor and accept an instrument in writing bearing the signature of an authorized individual named in this certificate of authority, to the same extent and for the same purpose that the person would accept and honor my signature as City Manager.

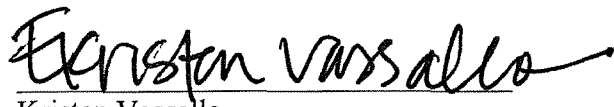
I request that the individuals named in this certificate of authority sign this document to provide a sample signature, and that these signatures be notarized as the true and correct signatures of the named individuals.

The authority granted in this certificate of authority terminates automatically upon the termination of a named individual's employment with the City. The authority granted under this certificate of authority may be terminated upon the transfer of a named individual to a different position at the City, at my discretion.

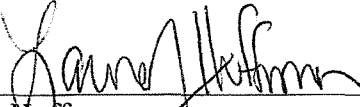
Signed this 6th day of October, 2006.



TOBY HAMMETT FUTRELL
City Manager



Kristen Vassallo
Chief of Staff



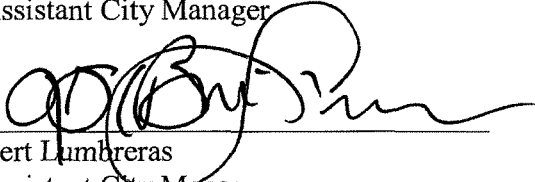
Laura Huffman
Assistant City Manager



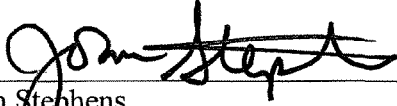
Michael C. McDonald
Assistant City Manager



Rudy Garza
Assistant City Manager



Bert Lumbreras
Assistant City Manager



John Stephens
Director, Financial & Administrative Services



Vickie Schubert
Deputy Director,
Financial & Administrative Services



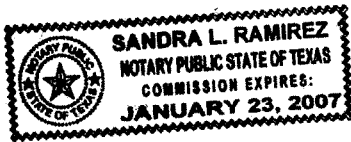
Leslie Browder
Deputy Director,
Financial & Administrative Services

STATE OF TEXAS
COUNTY OF TRAVIS

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BEFORE ME, the undersigned authority, personally appeared **TOBY HAMMETT FUTRELL**, known to me to be the person whose name is subscribed to this document, and acknowledged to me that she executed this document for the purposes and consideration expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 6 day of October, 2006.



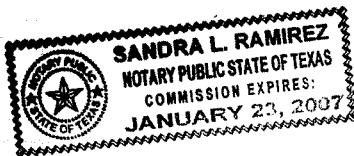
[Signature]
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS
COUNTY OF TRAVIS

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BEFORE ME, the undersigned authority, personally appeared **KRISTEN VASSALLO**, known to me to be the person whose name is subscribed to this document, and acknowledged to me that he executed this document for the purposes and consideration expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 6 day of October, 2006.



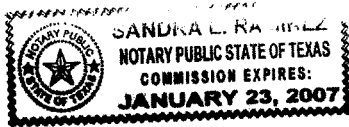
[Signature]
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS
COUNTY OF TRAVIS

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BEFORE ME, the undersigned authority, personally appeared **LAURA HUFFMAN**, known to me to be the person whose name is subscribed to this document, and acknowledged to me that she executed this document for the purposes and consideration expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 6 day of October, 2006.



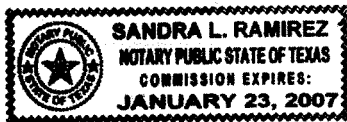
Sandra L. Ramirez
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS
COUNTY OF TRAVIS

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BEFORE ME, the undersigned authority, personally appeared **MICHAEL C. MCDONALD**, known to me to be the person whose name is subscribed to this document, and acknowledged to me that she executed this document for the purposes and consideration expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 6 day of October, 2006.



Sandra L. Ramirez
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS
COUNTY OF TRAVIS

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BEFORE ME, the undersigned authority, personally appeared **RUDY GARZA**, known to me to be the person whose name is subscribed to this document, and acknowledged to me that he executed this document for the purposes and consideration expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 6 day of October, 2006.



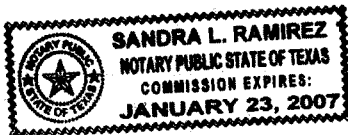

NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS
COUNTY OF TRAVIS

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BEFORE ME, the undersigned authority, personally appeared **BERT LUMBRERAS**, known to me to be the person whose name is subscribed to this document, and acknowledged to me that he executed this document for the purposes and consideration expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 6 day of October, 2006.

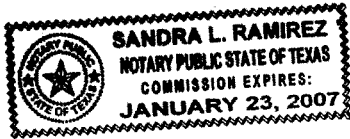



NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS §
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COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, personally appeared **JOHN STEPHENS**, known to me to be the person whose name is subscribed to this document, and acknowledged to me that he executed this document for the purposes and consideration expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 6 day of October, 2006.



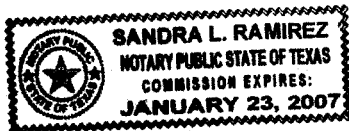


NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS §
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COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, personally appeared **VICKIE SCHUBERT**, known to me to be the person whose name is subscribed to this document, and acknowledged to me that she executed this document for the purposes and consideration expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 6 day of October, 2006.





NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS

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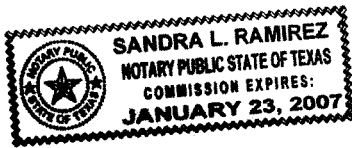
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COUNTY OF TRAVIS

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BEFORE ME, the undersigned authority, personally appeared **LESLIE BROWDER**, known to me to be the person whose name is subscribed to this document, and acknowledged to me that she executed this document for the purposes and consideration expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 6 day of
October, 2006.




NOTARY PUBLIC, STATE OF TEXAS

RESOLUTION NO. 20080605-008

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

Council authorizes the City Manager to negotiate and execute a contract for the fee simple acquisition of Lots 40, 41 and 42, Block B, Comanche Canyon Ranch Area Three, a subdivision in Travis County, Texas fronting on Bullick Hollow Road, from Comanche Canyon Development, Inc., a Texas corporation, by Robert H. Theriot, its President, in a total amount not to exceed \$7,225,000.

ADOPTED: June 5, 2008

ATTEST: Shirley A. Gentry
Shirley A. Gentry
City Clerk

ORDINANCE NO. 20080515-035

AN ORDINANCE GRANTING VARIANCES FROM CITY CODE SECTIONS 25-8-452 AND 25-8-454; AND ESTABLISHING AN ADMINISTRATIVE VARIANCE PROCESS FROM CITY CODE SECTIONS 25-8-301, 25-8-302, 25-8-341, AND 25-8-342 FOR DEVELOPMENT OF WATER TREATMENT PLANT NUMBER 4.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. In this ordinance:

- (A) DIRECTOR means the director of the Watershed Protection and Development Review Department.
- (B) WTP4 SITES means the sites for the Water Treatment Plant Number 4 plant, the raw water intake facility, and the pump station.
- (C) PLANT SITE means the area of land used for Water Treatment Plant Number 4, as described in attached Exhibit A.
- (D) RAW WATER SITE means the area of land used for the raw water intake facility to serve Water Treatment Plant Number 4, as described in attached Exhibit B.
- (E) PUMP SITE means the area of land used for the raw water pump station to serve Water Treatment Plant Number 4, as described in attached Exhibit C.

PART 2. The variances granted in this ordinance and the administrative variance process established in this ordinance become effective only after the City Attorney files in the Travis County Official Public Records a document restricting from development, except that appropriate for conservation purposes, the property known as the Bull Creek site, as shown in Exhibit D. The document will not impair the ability of the City to transfer ownership of the site in the future, will be subject to existing easements, and will allow the construction, maintenance, repair, and replacement of transmission and distribution lines necessary to serve WTP4 sites only if the transmission and distribution lines are located at least 20 feet below the base of the Edwards Formation with no surface disturbance during construction, maintenance, repair or replacement activities.

PART 3. A variance is granted from City Code section 25-8-452 (*Critical Water Quality Zone*) for the Raw Water Site to allow construction of the raw water intake facility in the critical water quality zone.

PART 4. Variances are granted from City Code section 25-8-454(D) (*Uplands Zone*) to provide:

- (1) for the Plant Site, impervious cover may exceed 20 percent, but may not exceed 50 percent net site area; at least 25 percent of the Plant Site must be retained in or restored to its natural state to serve as a contiguous buffer to receive overland drainage; and
- (2) for the Pump Site, impervious cover may exceed 20 percent, but may not exceed 50 percent net site area; at least 25 percent of the Pump Site must be retained in or restored to its natural state to serve as a contiguous buffer to receive overland drainage.

PART 5. An administrative variance process is established allowing the director to grant variances from certain City Code provisions for WTP4 sites. The director may grant variances from:

- (A) Section 25-8-301 (*Construction of a Roadway or Driveway*), to allow construction of driveways on slopes greater than 15 percent on the Plant Site;
- (B) Section 25-8-302 (*Construction of a Building or Parking Area*), to allow construction of a building or parking structure on slopes greater than 25 percent and to allow a parking area on slopes greater than 15 percent on the Plant Site and the Pump Site;
- (C) Section 25-8-341 (*Cut Requirements*), to allow:
 - (1) cuts to exceed four feet but not to exceed 30 feet of depth on the Plant Site; and
 - (2) cuts to exceed four feet, but not to exceed 60 feet of depth on the Pump Site; and
- (D) Section 25-8-342 (*Fill Requirements*), to allow:
 - (1) fill to exceed four feet but not to exceed 40 feet of depth on the Plant Site; and
 - (2) fill to exceed four feet, but not to exceed 10 feet of depth on the Pump Site.

PART 6. The director may grant a variance under this ordinance if the director determines that:

- (A) the variance is the minimum departure from current code necessary to achieve the project's needs.
- (B) the variance minimizes, to the extent possible, any harmful consequences to the environment.
- (C) compliance with the code provision imposes an unacceptable engineering or financial impact to the project.
- (D) to the extent possible, mitigation is provided that reduces the impact of the proposed variance and meets the intent of the code provision; and to assist in this determination, the director shall consider the Variance Request Evaluation Criteria table approved by Environmental Board Resolution EB 111407 on November 14, 2007; and
- (E) granting the variance will result in water quality that is at least equal to the water quality achievable without the variance.

PART 7. The director shall prepare written findings to support the grant or denial of a variance request within 30 days under this ordinance and shall notify the Environmental Board of each variance granted. The director shall submit a quarterly report to Council and the Environmental Board that includes:

- (A) A list of variances granted under this ordinance and their respective findings;
- (B) the construction status of WTP4 sites granted a variance under this ordinance; and
- (C) the status of the review and permitting process for all WTP4 related projects.

PART 8. An interested party or the Environmental Board may appeal a decision by the director under this ordinance to the City Manager. The provisions of City Code Chapter 25-1, Article 7, Division 1 (*Appeals*) establish the process for appeals under this ordinance.

PART 9. This ordinance takes effect on the later of the following:

- (A) May 26, 2008, or
- (B) the date the Austin City Council adopts an amendment to Ordinance No. 040129-43 as necessary to apply the variances and variance process established in this ordinance to WTP 4 sites located within the Comanche Canyon Ranch Planned Unit Development.

PASSED AND APPROVED

| | |
|---|---|
| <p>_____ May 15, 2008</p> | <p>§ § § _____ Will Wynn Mayor</p> |
| <p>APPROVED: _____ David Allan Smith City Attorney</p> | <p>ATTEST: _____ Shirley A Gentry City Clerk</p> |

EXHIBIT A

PLANT SITE

The area of land used for Water Treatment Plant Number 4

Three tracts of land more particularly described as:

Tract 1 being 20.357 acres of land out of the S.T. Bullock Survey No. 76, Abstract No. 2624 and the Riordan Survey No. 76, Abstract No. 2618, in Travis County, Texas and more particularly described in the following field notes.

Tract 2 being 40.43 acres of land out of the Luis Fritz Survey No. 291, Abstract 280, in Travis County, Texas and more particularly described in the following field notes.

Tract 3 being 36.20 acres of land out of the Alexander Dunlap Survey No. 805, Abstract 224, Travis County, Texas SAVE AND EXCEPT the 4.2 acre tract of land out of the Alexander Dunlap Survey No. 805, Abstract 224, Travis County, Texas and more particularly described in the following field notes.



MACIAS & ASSOCIATES, L.P.
LAND SURVEYORS

EXHIBIT " A "
Tract 1

DHD Ventures, LTD
To
The City of Austin
December 30, 2007

LEGAL DESCRIPTION

OF A 20.357 ACRE (886,753 SQUARE FOOT) TRACT OF LAND OUT OF THE S.T. BULLOCK SURVEY NO. 76, ABSTRACT NO. 2624 AND THE RIORDAN SURVEY NO. 76, ABSTRACT NO. 2618 IN TRAVIS COUNTY, TEXAS. SAID 20.357 ACRE TRACT ALSO BEING OUT OF THE REMAINING PORTION OF THE 312.76 ACRE TRACT CONVEYED TO ROBERT H. THERIOT BY DEED DATED JANUARY 9, 1998 BY INSTRUMENT OF RECORD IN VOLUME 13294, PAGE 1317 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS AS SHOWN ON THE ACCOMPANYING SKETCH AND DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

POINT OF BEGINNING, at a ½" iron rod found on the south line of a 34.85 acre tract of land conveyed to MCPMT, LTD by instrument of record in volume 4286, page 749, deed records of Travis County Texas, the northwest corner of a 42.00 acre tract conveyed to John E. and John M. Joseph, Trustees, by instrument of record in volume 11175, page 150 in the real property records of Travis County, Texas, an exterior corner of the remaining Theriot 312.76 acre tract, the northeast corner of a Cellular Antenna Site Lease and a corner of this tract,

THENCE, S27°03'26"W 465.17 feet with an east line of this tract and a west line of the 42.00 acre tract to a ½" iron rod with a "McAngus Surveying" cap,

THENCE, traversing through the 312.76 acre tract the following twenty three (23) courses;

- 1 N84°42'32"W, 223.30 feet to a ½" iron rod with a "McAngus Surveying" cap found,
- 2 N74°35'48"W, 195.30 feet to a magnetic nail found,
- 3 N41°52'08"W, 140.24 feet to a ½" iron rod with a "McAngus Surveying" cap found;
- 4 N01°32'12"E, 138.23 feet to a ½" iron rod with a "McAngus Surveying" cap found,
- 5 N45°46'37"W, 121.84 feet to a cotton spindle found,
- 6 N75°44'45"W, 84.61 feet to a ½" iron rod with a "Macias" plastic cap set,
- 7 N84°38'28"W, 21.74 feet to a magnetic nail found,
- 8 N23°30'46"W, 320.56 feet to a ½" iron rod with a "McAngus Surveying" cap found;
- 9 N24°20'57"E, 307.36 feet to a ½" iron rod with a "McAngus Surveying" cap found,

- 10 N04°34'51"E, 147.37 feet to a ½" iron rod with a "McAngus Surveying" cap found,
 - 11 N30°19'35"W, 173.45 feet to a cotton spindle found,
 - 12 N17°11'21"E, 109.07 feet to cotton spindle found,
 - 13 N59°12'38"E, 99.88 feet to a ½" iron rod with a "McAngus Surveying" cap found,
 - 14 S84°11'23"E, 85.38 feet to a ½" iron rod with a "McAngus Surveying" cap found;
 - 15 S26°32'09"E, 145.69 feet to a ½" iron rod with a "McAngus Surveying" cap found,
 - 16 S62°32'21"E, 63.66 feet to a ½" iron rod with a "McAngus Surveying" cap found,
 - 17 S18°20'44"E, 105.92 feet to a ½" iron rod with a "McAngus Surveying" cap found,
 - 18 S72°31'09"E, 65.93 feet to a cotton spindle found,
 - 19 N31°45'27"E, 134.99 feet to a ½" iron rod with a "Macias" plastic cap set,
 - 20 S81°21'46"E, 130.92 feet to a ½" iron rod with a "McAngus Surveying" cap found,
 - 21 S35°19'41"E, 360.36 feet to a ½" iron rod with a "Macias" plastic cap set,
 - 22 S24°41'57"W, 107.79 feet to a ½" iron rod with a "McAngus Surveying" cap found,
 - 23 S20°38'53"E, 56.50 feet to a ½" iron rod with a "McAngus Surveying" cap found on an east line of this tract and the west line of said 34.85 acre tract,
- THENCE**, with the east line of this tract and the west line of said 34.85 acre tract, S27°12'10"W, 266.14 feet to a ½" iron rod found for a corner;
- THENCE**, S61°46'47"E, 337.29 feet to the POINT OF BEGINNING and containing 20.357 Acres (886,753 SQUARE FEET) of land

BEARING BASIS NOTE

All bearings described herein are based upon the Texas State Plane Coordinates System, NAD 83 (1986) South Central Zone

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

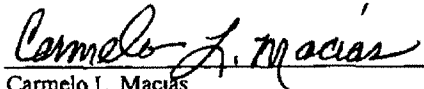
KNOW ALL MEN BY THESE PRESENTS:

That I, Carmelo Lettere Macias, a Registered Professional Land Surveyor, do hereby state that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this 30th day of December, 2007, A.D



Macias & Associates, L.P.
5410 South 1st Street
Austin, Texas 78745
512-442-7875


Carmelo L. Macias
Registered Professional Land Surveyor
No. 4333 – State of Texas

REFERENCES

Austin Grid No. M 33
TCAD PARCEL ID NO. 01-51371-0101
Volume 13294, Page 1317

MACIAS & ASSOCIATES, L.P., PROJECT NO. 425-01-07

J. jobs/ctw/20AcreTract

10 NOTLS REVIEWED
by JOHN MOORE on 1-15-2008
and Hearing Support Section
Department of Public Works
Transportation

40.43 Acres
John E. & John W. Joseph, Trustees

Travis County, Texas
C&B Job No. 050841002 205.4005

Tract 2

DESCRIPTION

BEING A 40.43 TRACT OF LAND SITUATED IN THE LOUIS FRITZ SURVEY NUMBER 291, ABSTRACT NUMBER 280 AND THE M.W. RIORDAN SURVEY NUMBER 74, ABSTRACT NUMBER 2629 IN TRAVIS COUNTY, TEXAS, BEING ALL OF THE REMAINDER OF THAT 42.00 ACRE TRACT OF LAND AS DESCRIBED IN A DEED TO JOHN JOSEPH & JOHN M. JOSEPH, TRUSTEES, RECORDED IN VOLUME 9483, PAGE 726, REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS (R.P.R.T.C.T.). SAID 40.43 ACRE TRACT BEING MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 3/4-inch iron pipe found for the southeast corner of a call 0.8897 acre tract described in a deed to MCPMT, Ltd., as recorded in Document No. 2003087287 and Document No. 2003087288, Official Public Records of Travis county, Texas, (O.P.R.T.C.T.) and to Daphene Clarke, recorded in Volume 13249, Page 2981 (R.P.R.T.C.T.), being the northeast corner of the said 42.00 acre tract and being in the west right-of-way line of Ranch to Market Road 620 (R.M. 620), for the northeast corner of the herein described tract;

THENCE with said west right-of-way line common with the east line of the said 42.00 acre tract for the following two (2) courses and distances:

1. **S 22°33'55" W** for a distance of **398.88** feet to a 1-inch iron rod found for the Point of Curvature of a non-tangent curve to the left,
2. Along said non-tangent curve to the left, passing through a central angle of **12°05'15"** to a 1-inch iron rod found for the Point of Non-tangency, said curve having a radius of **1479.26** feet, an arc length of **312.08** feet, and a long chord bearing **S 16°29'56" W** for a distance of **311.50** feet,

THENCE with the west line of a called 1.581 acre tract (Parcel 52A) to the State of Texas, described in Cause No. 2244 recorded under Document No. 1999071544 (O.P.R.T.C.T.), common with the east line of the remainder of said 42.00 acre tract for the following five (5) courses and distances:

1. **S 33°22'59" W** for a distance of **324.42** feet to a 1-inch iron rod found for angle point,
2. **S 51°40'01" W** for a distance of **275.20** feet to a 1/2-inch iron rod found for angle point,
3. **S 63°39'43" W** for a distance of **286.08** feet to a 1/2-inch iron rod with cap found for angle point,
4. **S 68°39'23" W** for a distance of **399.90** feet to a cotton gin spindle set for angle point,
5. **S 69°23'24" W** for a distance of **273.29** feet to a 1/2-inch iron rod with cap found for the southeast corner of the said 42.00 acre tract, and of the herein described tract,

THENCE with the south line of the said 42.00 acre tract, common with the north line of a called 1751 865 acre tract described in a deed to the City of Austin recorded in Volume 11848, Page 1718 (R.P.R.T.C.T.), **N 62°28'52" W** for a distance of **49.82** feet to a 3/4 inch iron pipe found for the southwest corner of the said 42.00 acre tract, also being an easterly corner of a call 393.1037 acre tract described in a deed to The Commanche Trail Conservation Fund, recorded in Volume 11960, Page 1074 (R.P.R.T.C.T.), same being the southwest corner of the herein described tract;

THENCE with the southwest line of the said 42.00 acre tract common with a northeast line of the said 393.1037 acre tract, **N 20°25'32" W** for a distance of **1140.76** feet to a 1/2-inch iron rod found on a southerly line of a call 273 933 acre tract described in a deed to Robert H. Theriot, recorded in Volume 13294, Page 1317 (R.P.R.T.C.T.), being a corner of the said 393.1037 acre tract and being the west corner of the said 42.00 acre tract, and of the herein described tract,

THENCE with the southerly line of the said 273.933 acre tract common with a northerly line of the said 42.00 acre tract, **S 62°20'58" E** for a distance of **693.55** feet to an "X" found scribed in rock for the southeast corner of the said 273.933 acre tract, being an interior ell corner of the said 42.00 acre tract and of the herein described tract;

THENCE with the west line of the said 42.00 acre tract, common with the east line of the said 273.933 acre tract, **N 26°59'52" E** passing at a distance of 794.50 feet, and to the left 0.48 feet, a 1/2-inch iron rod with cap stamped "McAngus" found, for a total distance of **1210.75** feet to a 1/2-inch iron rod with cap found for the southwest corner of a Cellular Antenna Lease Site, recorded in Volume 9382, Page 661 (R.P.R.T.C.T.), for an exterior ell corner of the herein described tract, from which a 3/4 inch iron pipe found on the south line of a 34.85 acre tract described in a deed to MCPMT, Ltd. recorded under Document No. 2003087287 (O.P.R.T.C.T.), bears **N 26°59'10" E**, a distance of 50.01 feet, said iron pipe being called in said Volume 11175, Page 150 (R.P.R.T.C.T.), as marking the north corner of the said Louis Fritz Survey and the east corner of the D.J. Riordan Survey No. 76, Abstract 2618, and being on the south line of the Alex Dunlap Survey No. 805, Abstract No. 224;

THENCE with the south line of the said Cellular Antenna Lease Site common with a northerly line of the said 42.00 acre tract, **S 61°48'00" E** for a distance of **50.02** feet to a 1/2-inch iron rod found for the southeast corner of said Lease Site, being an interior ell corner of the said 42.00 acre tract and of the herein described tract;

THENCE with the east line of said Lease Site, common with the west line of the said 42.00 acre tract, **N 26°59'05" E** for a distance of **49.97** feet to a 1/2-inch iron rod found on the south line of the said 34.85 acre tract for the northeast corner of said Lease Site being the northwest corner of the said 42.00 acre tract and of the herein described tract;

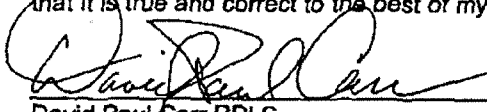
THENCE with the south line of the said 34.85 acre tract and the said 0.8697 acre tract, common with the north line of the said 42.00 acre tract, **S 61°47'49" E** for a distance of **830.77** feet to the **POINT OF BEGINNING** and containing 40.43 acres of land, more or less.

40.43 Acres
John E. & John W. Joseph, Trustees

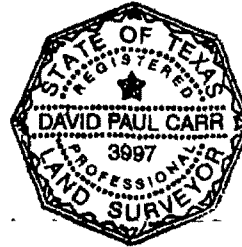
Travis County, Texas
C&B Job No. 050841002.205.4005

Bearing Basis: The Texas Coordinate System Central Zone NAD 83

I, David Paul Carr, a duly Registered Professional Land Surveyor in the State of Texas, do hereby certify that the foregoing description is based on a ground survey performed by Carter & Burgess in April of 2006 under my direction and supervision and that it is true and correct to the best of my belief.


David Paul Carr RPLS
Texas Registered Professional Land Surveyor
No. 3997

12/21/07
Date



FILED, NOTED, REVIEWED
by JOHN MOORE Date 1-15-2008
Engineering Support Section
Department of Public Works
and Transportation

36.20 Acres
MCPMT, LTD. et. Al
PD06-052

Travis County, Texas

Tract 3

DESCRIPTION

BEING A 36.20 ACRE TRACT OF LAND SITUATED IN THE ALEXANDER DUNLAP SURVEY NUMBER 805, ABSTRACT NUMBER 224 IN TRAVIS COUNTY, TEXAS, BEING ALL OF THE REMAINDER OF THAT 34.85 ACRE TRACT OF LAND AS DESCRIBED IN A DEED TO MCPMT, LTD., (TRACT 3), 99% INTEREST IN UNDIVIDED 1/2 INTEREST, RECORDED IN DOCUMENT NO. 2003087287 AND 1% INTEREST IN UNDIVIDED 1/2 INTEREST RECORDED IN DOCUMENT NO. 2003087288, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND TO DAPHENE H. SCHULZE, TRUSTEE, UNDIVIDED 1/2 INTEREST, BY CAUSE NO. 11580 PROBATE COURT OF TRAVIS COUNTY, TEXAS AND RECORDED IN VOLUME 9335, PAGE 128 REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, ALL OF THAT 0.8697 ACRE TRACT OF LAND AS DESCRIBED IN A DEED TO MCPMT, LTD., (TRACT 6) 99% INTEREST IN UNDIVIDED 1/2 INTEREST, RECORDED IN DOCUMENT NO. 2003087287 AND 1% INTEREST IN UNDIVIDED 1/2 INTEREST IN DOCUMENT NO. 2003087288, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND TO DAPHENE CLARKE, UNDIVIDED 1/2 INTEREST, RECORDED IN VOLUME 13249, PAGE 2981 REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, ALL OF THAT 0.50 ACRE TRACT OF LAND AS DESCRIBED IN A DEED TO MCPMT, LTD. (TRACT 2) 99% INTEREST RECORDED IN DOCUMENT NO. 2003087287 AND 1% INTEREST IN DOCUMENT NO. 2003087288, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND UNDIVIDED 1/2 INTEREST OF A 20 FOOT ROADWAY AS DESCRIBED IN A DEED TO MONTANDON COMMUNITY PROPERTY MANAGEMENT TRUST, RECORDED IN VOLUME 12273, PAGE 97 REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, SAID 36.20 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.

BEGINNING at a 3/4 inch iron pipe found on the southeast corner of said 0.8697 acre tract, being the northeast corner of that 42.00 acre tract of land as described in a deed to John E. & John M. Joseph, trustees, recorded in Volume 11175, Page 150, Real Property Records of Travis County, Texas and being the west right-of-way line of Ranch to Market Road 620 (R.M. 620), for the southeast corner of the herein described tract;

THENCE, leaving the said west right-of-way line of R.M. 620, with the south lines of said 0.8697 acre tract and said 34.85 acre tract common with the north lines of said 42.00 acre tract, a Cellular Antenna Lease Site, recorded in Volume 9382, Page 661, Real Property Records of Travis County, Texas, and of a call 273.933 acre tract described in a deed to Robert H. Theriot, recorded in Volume 13294, Page 1317, Real Property Records of Travis County, Texas **N 61°47'43" W**, passing at a distance of 176.84 feet the southwest corner of said 0.8697 acre tract, from which a 3/4 inch iron rod found bears **N 20°17'27" E**, a distance of 0.21 feet, and from which a PK nail with shiner found bears **N 25°02'22" E** a distance of 1.75 feet, passing at a distance of 830.77 feet a 1/2 inch iron rod found at the northeast corner of said Cellular Antenna Site Lease, passing at a distance of 880.78 feet a 3/4 inch iron pipe found at the northwest corner of said Cellular Antenna Lease Site, in all a total distance of **1218.10** feet to a 1/2 inch iron rod found at the interior ell corner of said 273.933 acre tract, southwest corner of said 34.85 acre tract, and of the herein described tract,

THENCE, with the west line of said 34.85 acre tract common with the east lines of said 273.933 acre tract and of a call 30.00 acre tract as described in a deed to Brownstone Gallery, Inc., recorded in Document No. 2002076479, Official Public Records of Travis County, Texas, **N 27°11'12" E**, passing at a distance of 266.11 feet an iron rod found with cap stamped McAngus, passing at a distance of 738.34 feet and to the left 0.30 feet an iron rod found with cap stamped McAngus for the southeast corner of said 30.00 acre tract, passing at a distance of 1499.80 feet a 1/2 inch iron rod found for the northeast corner of said 30.00 acre tract, in all a total distance of **1512.51** feet to a iron rod found with cap stamped C-A RPLS#2988 in the the

36.20 Acres
MCPMT, LTD et Al
PD06-052

Travis County, Texas

south right-of-way line of Bullick Hollow, and being the northwest corner of said 34.85 acre tract, and of the herein described tract

THENCE, with the north line of said 34.85 acre tract common with the said south right-of-way line of Bullick Hollow, the following two (2) courses

- 1 S 66°06'34" E, a distance of 321.24 feet to a iron rod found with cap stamped C-A RPLS#2988,
- 2 S 55°17'19" E, a distance of 107.66 feet to a 5/8 inch iron rod found,

THENCE, with the south line of a call 0.16 acre tract, same being the south right-of-way line of Bullick Hollow as described in a deed to Travis County recorded in Volume 12949, Page 1296 Real Property Records of Travis County, Texas, the following two (2) courses

- 1 S 50°49'21" E, a distance of 294.84 feet to a iron rod set with cap stamped Carter Burgess,
- 2 S 58°44'13" E, a distance of 220.44 feet to a 5/8 inch iron rod found in the west line of that call 0.96 acre tract as described in a deed to Hal H. Bell, recorded in Volume 2457 Page 522, Deed Records of Travis County, Texas, being the southeast corner of the said 0.16 acre tract and the northeast corner of the herein described tract,

THENCE, with a easterly line of said 34.85 acre tract common with the west line of said 0.96 acre tract, S 23°25'05" W, a distance of 192.03 feet to a 5/8 inch iron rod found, at an exterior ell corner of said 34.85 acre tract, being the southwest corner of said 0.96 acre tract the northwest corner of Lot 1, Block A, of Speedy Stop 209, a subdivision, recorded in Document No 200300329, Official Public Records of Travis County, Texas, and also being the northeast corner of that 0.088 acre tract (Tract 2) as described in a deed to Michael G. Haggerty, recorded in Volume 12203, Page 1595, Real Property Records of Travis County, Texas,

THENCE, with a easterly line of said 34.85 acre tract common with the northerly, westerly and southerly line of said 0.088 acre tract, the following five (5) courses

- 1 N 48°43'59" W a distance of 5.55 feet to a 5/8 inch iron rod found;
- 2 S 29°41'47" W, a distance of 178.37 feet to a 3/4 inch iron rod found;
3. N 62°11'07" W, a distance of 10.33 feet to a 5/8 inch iron rod found,
- 4 S 36°34'07" W, a distance of 21.83 feet to a 3/4 inch iron rod found and;
5. S 49°43'48" E, a distance of 26.30 feet to a 3/4 inch iron pipe found, at an exterior ell corner of said 34.85 acre tract, and also being the northwest corner of a call 1.028 acre tract as described in a deed to River City Real Estate, PLLC, recorded in Volume 13282, Page 2552 Real Property Records of Travis County, Texas,

THENCE, with a easterly line of said 34.85 acre tract common with the west line of said 1.028 acre tract, S 23°41'25" W, a distance of 208.49 feet to a 5/8 inch iron rod found being an angle point of said 34.85 acre tract, being the southwest corner of said 1.028 acre tract and also being the northwest corner of a call 0.970 acre tract as described in a deed to Tracy Collins, recorded in Document No. 2005108470, Official Public Records of Travis County, Texas,

36.20 Acres
MCPMT, LTD et Al.
PD06-052

Travis County, Texas

THENCE, with a easterly line of said 34.85 acre tract common with the west line of said 0.970 acre tract, **S 23°01'37" W**, a distance of **210.69** feet to a 1/2 inch iron rod found, being the southwest corner of said 0.970 acre tract and also being the northwest corner of said 20 foot roadway,

THENCE, with the north line of said 20 foot roadway common with the south line of said 0.970 acre tract, **S 46°47'04" E**, a distance of **205.54** feet to a calculated point being the southeast corner of said 0.970 acre tract, and also being the said west right-of-way line R.M. 620, from which a 1/2 inch iron rod found bears **S 46°47'04" E**, a distance of **0.28** feet, and from which a TxDot Type II monument found bears distance of **215.57** feet along the arc of a curve to the right, having a central angle of **04°14'15"**, a radius of **2914.79** feet and a chord bearing **N 27°18'58" E**, a distance of **215.52** feet,

THENCE, with the west right-of-way line of R.M. 620 and the arc of a curve to the left, an arc distance of **21.33** feet, having a central angle of **00°25'09"**, a radius of **2914.79** feet and a chord bearing **S 24°59'16" W**, a distance of **21.33** feet to a 1/2 inch iron rod found at the northeast corner of said 0.50 acre tract and being on the south line of said 20 foot roadway,

THENCE, with the east line of said 0.50 acre tract, **S 25°19'51" W**, a distance of **109.07** feet to a iron rod set with cap stamped Carter Burgess, at the southeast corner of said 0.50 acre tract being a southerly line of said 34.85 acre tract,

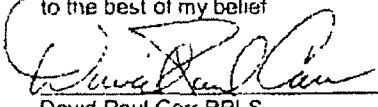
THENCE, with said southerly line of the 34.85 acre tract, **S 46°52'42" E** a distance of **3.30** feet to 1/2 inch iron rod found on the arc of a curve to the left on the said west right-of-way line of R.M. 620 and being a east line of said 34.85 acre tract,

THENCE, with the west right-of-way line R.M. 620, common with the east lines of said 34.85 acre tract and said 0.8697 acre tract, the following two (2) courses

- 1 With the said arc of the curve to the left an arc distance of **14.33** feet, having a central angle of **00°16'54"**, a radius of **2914.79** feet and a chord bearing **S 22°28'22" W**, a distance of **14.33** feet,
- 2 **S 22°27'56" W**, passing at a distance of **235.53** feet the northeast corner of said 0.8697, and also being an exterior ell corner of said 34.85 acre tract, in all a total distance of **446.76** feet to the **POINT OF BEGINNING** and containing **36.20** acres of land, more or less

Bearing Basis: The Texas Coordinate System Central Zone Nad 83

I David Paul Carr a duly Registered Professional Land Surveyor in the State of Texas do hereby certify that the foregoing description is based on a on the ground survey performed by Carter & Burgess in September of 2006 under my direction and supervision and that it is true and correct to the best of my belief


David Paul Carr RPLS
Texas Registered Professional Land Surveyor
No. 3997



Sept 7, 2006
Date

JOHN MOORE *11-5-2008*
County Surveyor
County of Travis, Texas



MACIAS & ASSOCIATES, L.P.
LAND SURVEYORS

MCPMT, LTD, AND
DAPHENE H. SCHULZE, TRUSTEE
To
CITY OF AUSTIN
(Save & Except Tract)
January 14, 2008

LEGAL DESCRIPTION

DESCRIPTION OF A 4.200 ACRE (182,942 SQUARE FOOT) TRACT OF LAND OUT OF THE ALEXANDER DUNLAP SURVEY NO. 805, ABSTRACT NO. 224, TRAVIS COUNTY, TEXAS, BEING OUT OF A 34.85 ACRE TRACT REFERRED TO AS "TRACT 3" IN TWO GENERAL WARRANTY DEEDS DATED MARCH 26, 2003 TO MCPMT, LTD., 99% INTEREST IN AN UNDIVIDED 1/2 INTEREST RECORDED IN DOCUMENT NO. 2003087287 AND 1% INTEREST IN AN UNDIVIDED 1/2 INTEREST RECORDED IN DOCUMENT NO. 2003087288, AND TO DAPHENE H. SCHULZE, TRUSTEE, AN UNDIVIDED 1/2 INTEREST BY CAUSE NO. 11580, PROBATE COURT RECORDS OF TRAVIS COUNTY, TEXAS, RECORDED IN VOLUME 9335, PAGE 128, REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 4.200 ACRE (182,942 SQUARE FOOT) TRACT AS SHOWN ON THE ACCOMPANYING SKETCH, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod with plastic cap stamped "CA INC RPLS #2988" found having Texas State Plane Coordinate (Central Zone, NAD83(CORS), U.S. Feet, Combined Scale Factor 1.00011) values of N=10,119,929.31, E=3,077,071.15, on the south right-of-way line of Bullick Hollow Road, a varying width right-of-way, at the northwest corner of said 34.85 acre tract, for the northwest corner of this tract;

THENCE, Southeasterly, with the south right-of-way line of Bullick Hollow Road and the north line of said 34.85 acre tract, the following three (3) courses:

- 1) S 66°05'48" E, a distance of 321.30 feet to a 1/2" iron rod with plastic cap stamped "CA INC RPLS #2988" found for an angle point;
- 2) S 55°19'51" E, a distance of 107.67 feet to a 5/8" iron rod found for an angle point;
- 3) S 50°47'47" E, a distance of 125.23 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set on the east line of a 100-foot wide electric transmission and distribution line easement recorded in Volume 1793, Page 392, Deed Records of Travis County, Texas, for the northeast corner of this tract, from said point, a 5/8" iron rod found at the northeast corner of said 34.85 acre tract, bears S 50°47'47" E, 169.50 feet, and S 58°42'39" E, 220.36 feet;

4.200 Acres (182,942 Square Feet)

31808-1.doc

Page 1 of 4

THENCE, across said 34.85 acre tract, the following five (5) courses:

- 1) S 68°17'24" W, across said 100-foot wide electric transmission and distribution line easement, a distance of 129.90 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set on the west line of said 100-foot wide electric transmission and distribution line easement, for an angle point;
- 2) S 59°54'48" W, a distance of 97.08 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set for an angle point;
- 3) S 16°55'48" W, a distance of 141.23 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set for an angle point;
- 4) N 54°04'31" W, a distance of 138.72 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set for an angle point;
- 5) S 82°28'40" W, a distance of 365.09 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set on the west line of said 34.85 acre tract and on the east line of a 30.000 acre tract described in a deed dated December 31, 2001 to Brownstone Gallery, Inc., recorded in Document No. 2002076479, Official Public Records of Travis County, Texas, for the southwest corner of this tract, from said point, a 1/2" iron rod found at the southwest corner of said 34.85 acre tract, bears S 27°10'55" W, 985.66 feet;

THENCE, N 27°10'55" E, with the west line of said 34.85 acre tract and the east line of said 30.000 acre tract, at 514.32 feet, pass a 1/2" iron rod found at the northeast corner of said 30.000 acre tract, and continuing a total distance of 527.03 feet to the **POINT OF BEGINNING** and containing 4.200 acres (182,942 square feet) of land.

BEARING BASIS NOTE

The bearings described herein are Texas State Plane Grid Bearings, (Central Zone, NAD83 (CORS) Combined Scale Factor 1.00011). Project control points were established from reference station "AUS5CORS" having coordinate values of N=10,086,515.89, E=3,109,682.46 and "D-34-3001" having coordinate values of N=10,119,492.92, E=3,083,253.38.

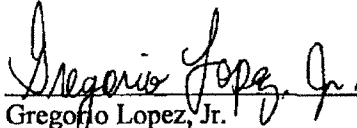
THE STATE OF TEXAS §
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

That I, Gregorio Lopez, Jr., a Registered Professional Land Surveyor, do hereby state that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this 14th day of January, 2008, A.D.

Macias & Associates, L.P.
5410 South 1st Street
Austin, Texas 78745
512-442-7875



Gregorio Lopez, Jr.
Registered Professional Land Surveyor
No. 5272 – State of Texas

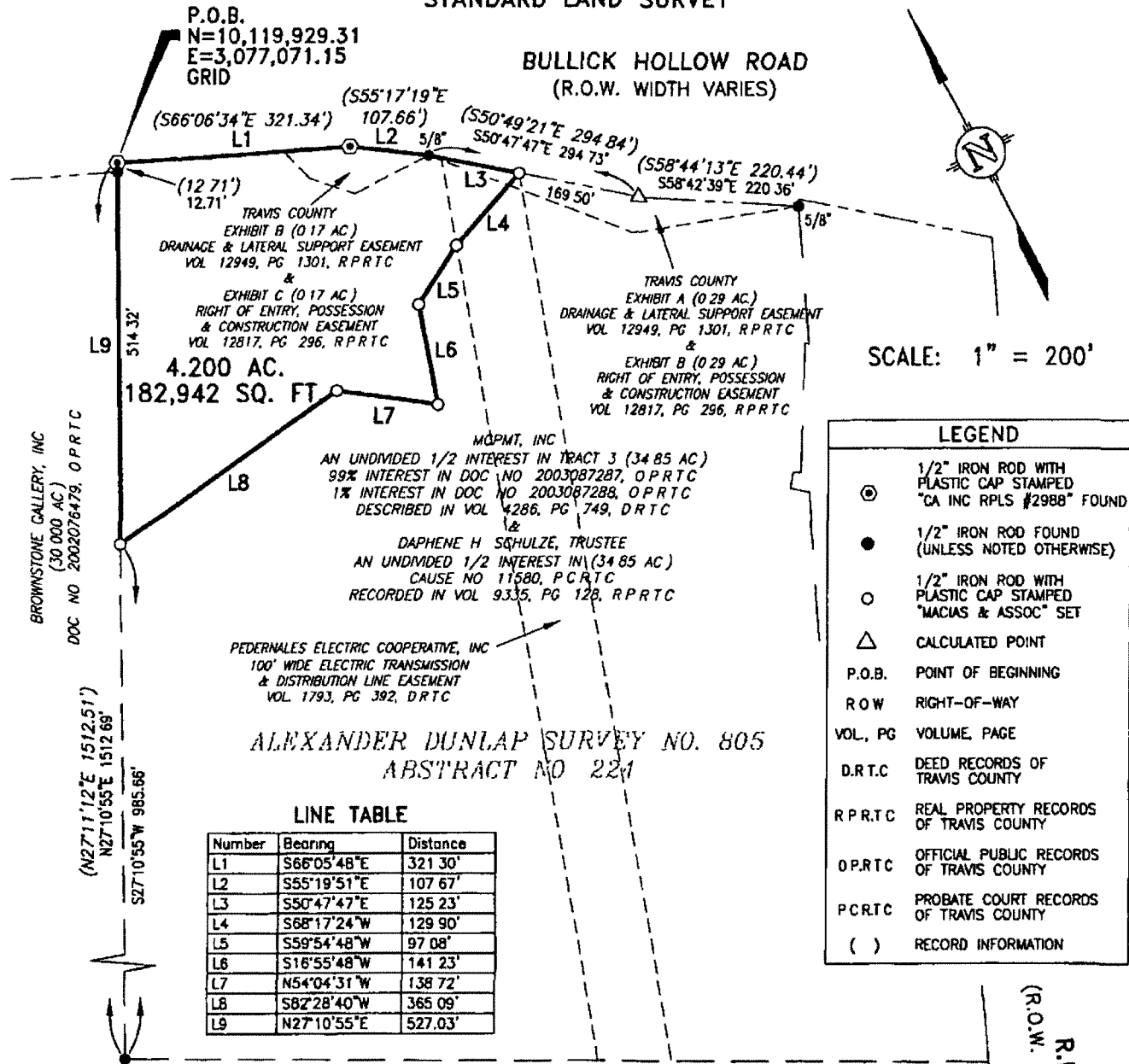


REFERENCES

MAPSCO 2003 462X
Austin Grid No. MC-34
TCAD PARCEL ID NO. 01-5634-0301
MACIAS & ASSOCIATES, L.P., PROJECT NO. 317-08-08

ALL NOTES REVIEWED
by JOHN MOORE Date 1-15-2008
Engineering Support Section
Department of Public Works
City of Austin

SKETCH TO ACCOMPANY LEGAL DESCRIPTION "STANDARD LAND SURVEY"

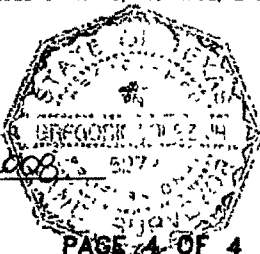


NOTES:

- THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT. RECORD INFORMATION ON THIS DRAWING IS BASED ON A PUBLIC RECORDS SEARCH BY THE SURVEYOR AND MAY NOT INCLUDE ALL EASEMENTS OR INSTRUMENTS PERTAINING TO THIS PROPERTY
- THE COORDINATES AND BEARINGS SHOWN HEREON ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM (CENTRAL ZONE, NAD83(CORS)). COMBINED SCALE FACTOR = 1.00011. THE COORDINATES WERE ESTABLISHED BY GPS STATIC OBSERVATION FROM REFERENCE STATION "AUSSCORS" HAVING COORDINATE VALUES OF N=10,086,515.89, E=3,109,682.48 AND "D-34-3001" HAVING COORDINATE VALUES OF N=10,119,492.92, E=3,083,253.38. ALL DISTANCES SHOWN ARE SURFACE DISTANCES

Gregorio Lopez, Jr.
Gregorio Lopez, Jr.
Registered Professional Land Surveyor
No. 5272 - State of Texas

Date: Jan. 14, 2008



PAGE 4 OF 4

DATE: 1-11-08
DRAWN BY: G.L.
MAI JOB NO: 317-08-08
REFERENCE: FB 491 & 492

MACIAS & ASSOCIATES, L.P.
LAND SURVEYORS

5410 SOUTH 1ST STREET
AUSTIN, TEXAS 78745 PH (512)442-7875
FAX (512)442-7875 EMAIL: MACIASURVEY@EARTHLINK.NET

EXHIBIT B

RAW WATER SITE

**The area of land used for the raw water intake facility to
serve Water Treatment Plant Number 4**

**4.28 acres of land out of the D&W RAILROAD COMPANY SURVEY No.
76 in Travis County, Texas and more fully described in the field notes that
follow.**

Exhibit B

Job. # 857009
Take Site

October 2, 1985

State of Texas
County of Travis

Tract 4

FIELDNOTES FOR A 4.28 ACRE TRACT OUT OF THE D & W RAILROAD COMPANY SURVEY NO. 76 IN TRAVIS COUNTY, TEXAS, AND BEING OUT OF THAT CERTAIN 528.85 ACRE TRACT OF LAND CONVEYED BY HOWELL M. FINCH TO ROBERT H. THERIOT IN A WARRANTY DEED DATED NOVEMBER 18, 1980, AND RECORDED IN VOLUME 7185, PAGES 2295-2302, DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 4.28 ACRE TRACT COMPRISING A PORTION OF LAKE TRAVIS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS, AS FOLLOWS, TO WIT:

Commencing at an iron rod by a fence corner post found to mark the south corner of said D & W Railroad Company Survey No. 76 for the south corner of said 528.85 acre tract; thence North $62^{\circ}23'43''$ West, along the southwest line of said Survey No. 76, with the southwest line of said 528.85 acre tract, 5,553.38 feet to an iron pipe found on or about the 715 foot contour line (M.G.V.D. datum) of Lake Travis for a corner of said 528.85 acre tract; thence continuing with said southwest line, North $63^{\circ}37'43''$ West 433.29 feet to a point, now under the water of Lake Travis on the bank of the Colorado River for the lower west corner of said 528.85 acre tract;

Thence North $10^{\circ}14'43''$ West, along the west line of said 528.85 acre tract, with the bank of the Colorado River, now under the water of Lake Travis, 216.14 feet to a submerged point for the southwest corner and "POINT OF BEGINNING" of this survey;

Thence continuing with the west line of said 528.85 acre tract being the bank of the Colorado River, North $10^{\circ}14'43''$ West 427.36 feet to a point for a corner of said 528.85 acre tract and a submerged corner of this survey;

Thence continuing with said west line of the 528.85 acre tract, North $28^{\circ}48'43''$ West 22.20 feet to a point for the northwest submerged corner of this survey;

Thence leaving the west line of said 528.85 acre tract, due East 297.16 feet to a point on the 700.00 foot contour line of Lake Travis (contour line based on M.G.V.D. datum) for the northeast corner of this survey from which corner a 5/8 inch iron rod set on said 700.00 foot contour line bears North $23^{\circ}35'00''$ West 53.98 feet;

Thence with said 700.00 foot contour line, South $23^{\circ}35'00''$ East 70.63 feet to a 6" nail set for a corner of this survey;

Thence South $68^{\circ}59'13''$ East, along the 700.00 foot contour line, based on M.G.V.D. datum, at 90.65 feet a brass disc monument set bears North $21^{\circ}00'47''$ East 5.18 feet, in all a total distance of 234.35 feet to a point for a corner of this survey;

Thence South $16^{\circ}51'02''$ East, with said contour line, 42.89 feet to a 5/8 inch iron rod set for a corner of this survey;

Thence South $69^{\circ}20'03''$ East, along the 700.00 foot contour line, 90.23 feet to a 5/8 inch iron rod set for the most east corner of this survey;

Thence continuing with said contour line, South $43^{\circ}28'36''$ West, at 51.11 feet a brass disc monument set bears North $46^{\circ}31'24''$ West 23.91 feet, in all a total distance of 147.06 feet to a 5/8 inch iron rod set for a corner of this survey;

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-14/85

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Thence South $75^{\circ}15'27''$ West, with said contour line, 137.13 feet to a 5/8 inch iron rod set for a corner of this survey;

Thence South $63^{\circ}11'53''$ West, along the 700.00 foot contour line (N.C.V.D. datum) at 14.43 feet elevation, from said monument set bears North $26^{\circ}48'07''$ West 18.40 feet, in all a total distance of 31.57 feet to a 5/8 inch iron rod set for a corner of this survey;

Thence with said contour line, South $14^{\circ}26'53''$ West 32.00 feet to a point for a corner of this survey;

Thence South $10^{\circ}04'27''$ East, along the 700.00 foot contour line of Lake Travis, based on N.C.V.D. datum, 32.00 feet to a point for the southeast corner of this survey from which corner a cotton spindle set on said contour line bears South $10^{\circ}04'27''$ East 32.80 feet;

Thence leaving the abovementioned contour line, due West 289.97 feet to the "POINT OF BEGINNING".

Surveyed on the ground by S.A. Gaise Engineers, Inc., 401 West 29th Street, Austin, Texas 78705, from field data recorded in Field Book No. 140, 183 and 189.

Stephen Earl Cobb
Stephen Earl Cobb
Registered Public Surveyor
No. 4297

10/3/85



EXHIBIT C

PUMP SITE

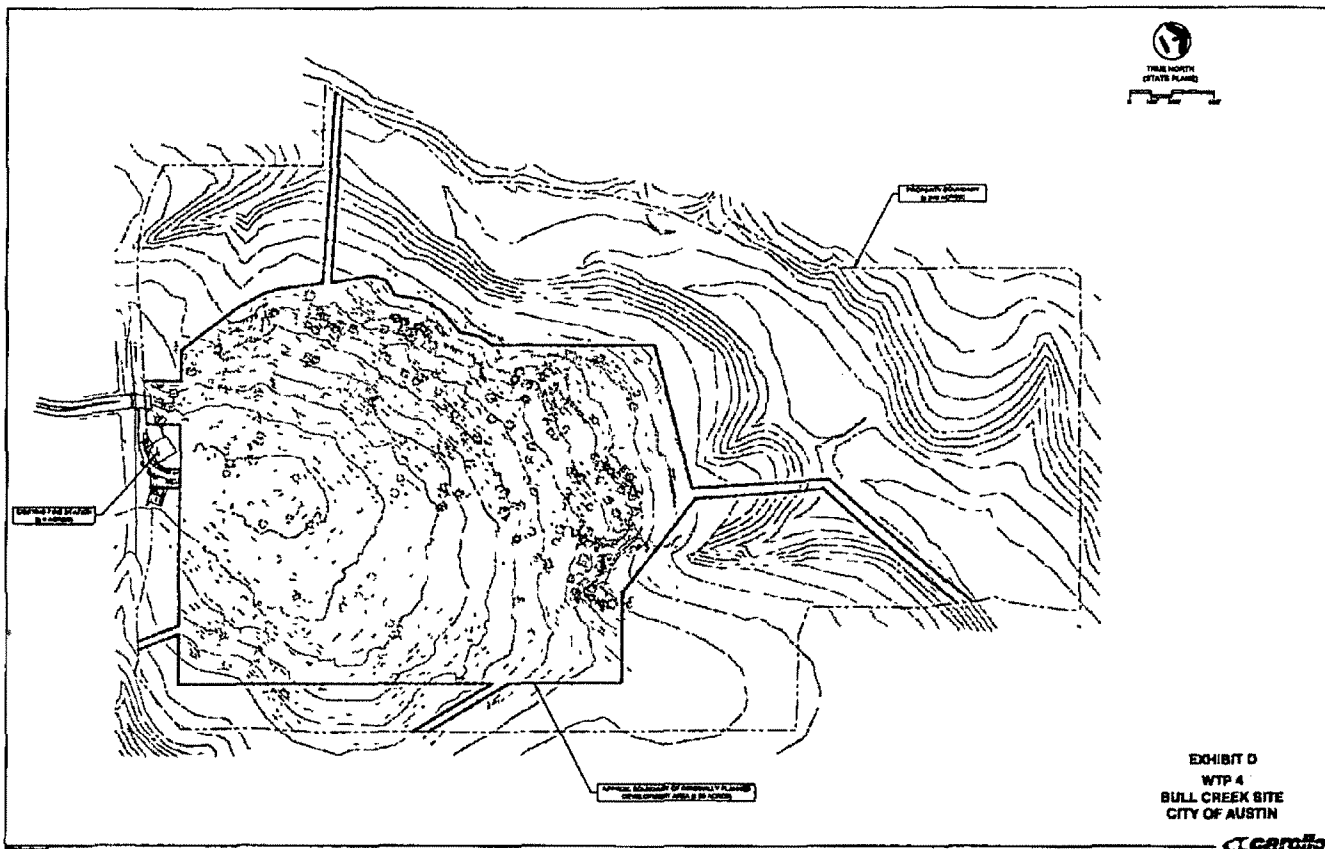
**The area of land used for the raw water pump station to
serve Water Treatment Plant Number 4**

**BEING Lots 40, 41, 42, Block B, COMANCHE CANYON RANCH AREA
THREE, a Subdivision in Travis County, Texas, according to the map or plat
thereof recoded under Plat Document No. 200600184, Official Public
Records of Travis County, Texas.**

EXHIBIT D

BULL CREEK SITE

Being approximately 102 acres out of Lot One, W.T.P. No 4
SUBDIVISION, a subdivision in Travis County, Texas, according to the
map or plat thereof recorded under Volume 86 Pages 190D through 191B of
the Official Public Records of Travis County, Texas and as illustrated in the
sketch following.





United States Department of the Interior
FISH AND WILDLIFE SERVICE

10711 Burnet Road, Suite 200

Austin, Texas 78758

512 490-0057

FAX 490-0974

NOV 07 2008



Mr. Kevin Ramberg
ACI Consulting
1001 Mopac Circle # 100
Austin, Texas 78746

Dear Mr. Ramberg:

This letter is in response to your September 23, 2008, letter and supporting information, requesting a concurrence from the U.S. Fish & Wildlife Service (Service) that an amendment will not be necessary for a revision to an existing underground water transmission tunnel easement on the Comanche Canyon Ranch. The Comanche Canyon Ranch is subject to 10(a)(1)(B) Incidental Take Permit # TE 004683-0 (Permit), as previously amended, authorizing take of the golden-cheeked warbler (*Dendrocia chrysoparia*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Kretschmann Cave mold beetle (*Texamauuops reddelli*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Tooth Cave spider (*Neoleptoneta myopica*), and the Tooth Cave ground beetle (*Rhadine persephone*) dated July 17, 2000. The approximately 446-acre Comanche Canyon Ranch property is located west of RM 620, south of Bullick Hollow Road, on both sides of Comanche Trail and Oasis Bluff Drive in the northwest area of Austin, Travis County, Texas. The current holder of the Permit is Comanche Canyon Development, Inc. (Permittee).

The existing underground water tunnel easement was established in 1986 and runs from Lake Travis easterly across portions of the Comanche Canyon Ranch Extraterritorial Jurisdiction Planned Unit Development and other privately-held parcels. The City of Austin is proposing to situate a raw water pump station within one of the permitted development areas of the Comanche Canyon Ranch (specifically Area 3). The location of the City's raw water pump station on Area 3 necessitates an adjustment to the existing 1986 underground water tunnel easement. The adjustment spans approximately 1,100 feet (ft), is 100 ft in width and encompasses 2.6 acres.

The new easement contains restrictive conditions consistent with the existing 1986 easement, which was in place during the negotiations and agreements made part of the Permit in 2000. As described in the conditions of the easement, the City of Austin must wholly construct the tunnel by boring or tunneling; cannot disturb the surface of the property in any way; and must maintain the tunnel at or below 550 ft mean sea level (MSA). The respective surface elevation of this area within the Comanche Canyon Ranch ranges from 780 ft MSA to 940 ft MSA (a minimum difference of 230 ft).

We have reviewed the request and supporting information, and the Service concurs that the proposed realignment and associated construction, operation, and maintenance of the tunnel will not require a permit amendment. We make this determination because the proposed tunnel will

TAKE PRIDE[®]
IN AMERICA

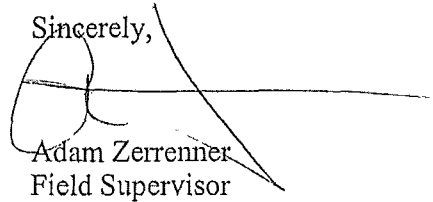
Mr. Kevin Ramberg

2

be constructed by tunneling or boring and is located well below (at least 250 ft) the surface of the on-site preserve associated with the permit likely to contain listed karst invertebrates. In addition, surface access will be from a location where listed species would not be affected. The Service further determines that the construction, operation, maintenance, and repair of the Underground Water Transmission Line is authorized as contemplated by the applicable provisions of the Balcones Canyonlands Conservation Plan regional permit (PRT #788841) and related documents as a prior-approved planned infrastructure corridor.

If you have questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Zerrenner', is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.

Adam Zerrenner
Field Supervisor

cc: Shirley Shaw, Comanche Canyon Ranch
Jerry Harris, Brown McCarroll LLP
Junie Plummer, City of Austin



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Post Office Box 1306

Albuquerque, New Mexico 87103

In Reply Refer To:
FWS/R2/ES-T&E/039152

DEC 01 2008

Ms. Lauren Dill
aci consulting
A Division of ACI-Group LLC
1001 Mopac Circle, Suite 100
Austin, Texas 78746

Dear Ms. Dill:

The U.S. Fish and Wildlife Service (Service) is in receipt of your letter of request for two minor amendments to the Comanche Canyon Ranch permit (TE-004638-2) dated May 22, 2006. The changes added at the end of Condition E and the new addition of Condition RR are as follows:

- E. The City of Austin is authorized for the take of endangered species listed in this permit Condition E incidental to activities necessary for the construction, operation, maintenance, and repair on Area 3 (also known as Tract 2) of a raw water pump station and related facilities as described in the enclosed Special Warranty Deed. Area 3 includes lots 40, 41, and 42, Block B, COMANCHE CANYON RANCH AREA THREE, a subdivision according to the map or plat recorded in Document No. 200600184 of the Plat Records, Official Public Records of Travis County, Texas. The City of Austin is also authorized for take of the endangered species listed in this permit Condition E incidental to activities necessary for the construction, operation, maintenance, and repair on Area 4 (also known as Tract 1) of a water treatment facility and related facilities. Area 4 is located approximately 800 feet west of RM 620, on the east central portion of the Comanche Canyon Ranch Property [as legally described in Exhibit A].

New Condition:

- RR. If, as a result of a violation, default, or noncompliance of this Permit by the Permittee, the City of Austin, or other landowner within the area covered by this Permit, the Service may seek to suspend, terminate, or revoke this Permit for reasons not the fault of the non-defaulting landowner, and the non-defaulting landowner is otherwise in compliance with the terms of this Permit, the Service shall seek to craft a remedy that does not affect the non-defaulting landowner's rights, benefits, and responsibilities under the Permit prior to suspending, terminating, or revoking this Permit. If it is not practicable to so craft a remedy then the Service must nonetheless suspend, terminate, or revoke this Permit. The

Ms. Lauren Dill

2

Service will process for issuance to any such non-defaulting landowner a Permit conferring the same rights, benefits, and responsibilities with respect to the non-defaulting landowner's property as provided under this Permit, without additional requirements of conditions beyond those applicable to such non-defaulting landowner under this Permit.

No changes were made to any other permit terms and conditions.

Please recognize that Comanche Canyon Development, Inc. continues to be held responsible for all the terms and conditions of the permit, as amended.

A copy of this letter will be filed with the enclosed amended permit (TE-004683-3) documents here in the Service's Regional Office. Please feel free to contact me at 505-248-6671, or Acting Regional Habitat Conservation Plan Coordinator, at 505-248-6651, should you have any questions or comments regarding these approved corrections.

Sincerely,


Assistant Regional Director

Enclosure

Ms. Lauren Dill

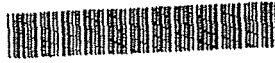
3

cc: Supervisor, Ecological Services Field Office, Austin, TX

(16)

14663-07-00426 GAD

RECORDED BY
NORTH AMERICAN TITLE



WD

2008129833

14 PGS

14

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS THAT:
COUNTY OF TRAVIS §

Under the threat of condemnation by the Grantee named herein, Comanche Canyon Development, Inc., a Texas corporation ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantor in hand paid by CITY OF AUSTIN, a home rule municipal corporation situated in the Counties of Travis, Williamson and Hays, in the State of Texas ("Grantee"), whose mailing address is P.O. Box 1088, Austin, Travis County, Texas 78767, Attn: Real Estate Services Division, the receipt and sufficiency of which consideration is hereby acknowledged and confessed, and for which no lien or encumbrance, express or implied, is retained, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY, unto Grantee, subject to all of the reservations, exceptions and other matters set forth or referred to herein, the following described real property, together with all improvements thereon, if any, and any and all rights and appurtenances pertaining to the "Property", including any development rights, utility rights, minerals, mineral rights, mineral royalty interests, water rights, adjacent streets, alleys, and rights of way (collectively the "Property"), to-wit:

Lots 40, 41 and 42, Block B, Comanche Canyon Ranch Area 3, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200600184, Official Public Records of Travis County, Texas.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, and Grantee's successors or assigns, forever; and, subject to all of the matters set forth or referred to herein, Grantor does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or part thereof, by, through, or under Grantor, but not otherwise; provided, however that this conveyance is made by Grantor and accepted by Grantee subject to: (a) all of the title exceptions revealed in or by the recorded documents and other matters listed on **Exhibit C** attached hereto and incorporated herein by reference; (b) all regulations, restrictions, laws, statutes, ordinances, obligations or other matters which affect the Property and which are imposed by or exist by reason of any regulatory, governmental, or quasi-governmental districts, entities, agencies, authorities or other bodies of any kind or nature; (c) all standby fees, taxes and assessments by any taxing authority for the current and all subsequent years, and all liens securing the payment of any of the foregoing; (d) all reservations, restrictions, covenants, conditions, and other matters set forth or referred to in this Deed; and (e) with regards to any and

all easements and or restrictive covenants previously granted directly to Grantee and covering any part of the Property, Grantor and Grantee hereby expressly acknowledge, stipulate and agree that the doctrine of merger will not apply to such Permitted Exceptions and that Grantee's rights under such easements will remain in effect separately from the title to the Property conveyed in this Deed, even though the underlying fee ownership of the Property, or any parts thereof, and such easements are now or hereafter vested in one party or entity.

Furthermore, Grantor does hereby impress the Property with the following restrictions:

1. The use of the property will be restricted to a raw water pump station facility (the "Facility").

2. The Facility will consist of (a) underground structures and equipment (the "Underground Improvements") and (b) above-ground structures and equipment (the "Above-Ground Improvements").

3. The Above-Ground Improvements will be restricted to:

a. Not more than three (3) pump station buildings (the "Pump Station Buildings"),

b. Pump station motors, furniture, equipment, machinery, instruments and carbon silos all located inside the Pump Station Buildings,

c. Driveways, drives and walkways (the "Access Ways"),

d. Water quality ponds (the "Water Quality Ponds"),

e. Retaining walls (the "Retaining Walls"),

f. (i) A perimeter wall (the "Perimeter Wall") and (ii) perimeter wall gates (the "Perimeter Wall Gates"), in each case located eight (8) feet inside the perimeter boundary of the Property, which fence may be constructed in two (2) phases as provided in paragraph 8 below,

g. A perimeter ranch fence (the "Perimeter Ranch Fence") which will be constructed around the perimeter of the portion of the Property not surrounded by the initial or first phase of the Perimeter Wall until the second phase of the Perimeter Wall is constructed as provided for in paragraph 8 below,

h. Raw water transmission lines (the "Above-Ground Raw Water Transmission Lines"),

i. One (1) raw water transmission line surge tank ("Surge Tank") for each Pump Station Building,

j. Four (4) electrical transformers ("Electrical Transformers") for each Pump Station Building,

k. Fire hydrants, and

l. Signage that complies with the City of Austin, Texas sign ordinance.

4. Each Pump Station Building will:

a. Be restricted to a footprint of not more than 18,000 square feet above-ground.

b. Be restricted to a maximum height of fifty (50) feet measured from the lowest exterior grade contiguous to the individual Pump Station Building.

c. Have exterior façades, including variable height buttresses and fake chimneys, all constructed of indigenous stone of muted natural earth tones in color, specifically excluding Austin White Chop.

d. Have roofs constructed of mission style clay, concrete or metal tiles of variegated muted earthtone color.

e. Have window shutters and doors of muted earth tones in color.

5. Each Water Quality Pond and all Access Ways will be constructed with integral color concrete of a muted natural earth tone in color and the walls of each Water Quality Pond will have on the top thereof 5' high decorative metal fencing.

6. All Retaining Walls will be constructed of either (a) approximately 18" x 18" x 5' long limestone blocks stacked in a raked pattern back and will not exceed 9' high in any lift before terracing or (b) approximately 12" wide integral color concrete of a muted earth tone in color with stamped pattern or (c) approximately 12" wide integral color interlocking concrete masonry units of a muted earth tone in color or (d) a naturally cut stone face with a lip to retain top soil if a geotechnical report verifies the appropriateness thereof, in which case the lip will consist of limestone blocks being approximately 18" x 18" x 5' long in size.

7. The Perimeter Wall will be at least 8' in height and will be constructed (a) of pre-cast concrete 2' tall panels, muted earth tone colored (on both sides of each pre-cast panel), in dry-stack pattern and (b) dry-stack integral muted earth tone color pre-cast columns at a maximum 10' on center with the columns of equal height as the Perimeter Wall. All gates in the Perimeter Wall will be constructed of decorative metal or wood which gates can not be seen through and which will have decorative metal hinges, straps and supports. The Perimeter Wall may be constructed in two phases. The initial or first phase of the Perimeter Wall will surround all of the portions of the Property upon which Phase 1 and Phase 2 of the Facility are to be constructed as indicated on **Exhibit A** which is attached hereto and made a part hereof for all purposes. The initial or first phase of the Perimeter Wall will be constructed and in place prior to

the Facility being placed in operation. The second phase of the Perimeter Wall will be constructed and in place prior to the time that the portion of the Facility to be constructed on the portion of the Property surrounded by the Perimeter Ranch Fence is placed in operation.

8. The Perimeter Ranch Fence will be constructed of five-strand barbwire with steel posts and with one or more ranch gates.

9. No security razor wire, barbwire or anything similar thereto shall be placed on (i) the Perimeter Wall, (ii) the Perimeter Wall gates, (iii) the Perimeter Ranch Fence (except for five-strand barbwire) and (iv) the Perimeter Ranch Fence gates.

10. The Above-Ground Raw Water Transmission Lines will be maintained in a painted muted earth tone color, unless otherwise mandated by the State of Texas.

11. All Surge Tanks will be maintained in a painted muted earth tone color unless otherwise mandated by the State of Texas and will be constructed and maintained in a horizontal position.

12. All Electrical Transformers will be located between a Pump Station Building and a Retaining Wall.

13. The Property will be landscaped with predominantly native and naturalized plants selected from the "Grow Green" list approved by the City of Austin ("Native Vegetation").

14. Landscaping for the portion of the Property upon which Phase 1 and Phase 2 of the Facility are to be constructed will be designed to soften the visual impact of the Pump Station Buildings and will be substantially as indicated in **Exhibit A** which is attached hereto and made a part hereof for all purposes. Landscaping for the balance of the Property will be in substantial conformance with the landscaping reflected in **Exhibit A** and will be installed at the time that said balance of the Property is developed by Grantee.

15. There will be no on-site rock crushing or other processing of excavated material on the Property.

16. No oil well drilling, oil development operations, oil refining, quarrying, or mining operations of any kind will be permitted on the Property, nor will oil wells, oil tanks, or mineral excavations be permitted on the Property.

17. No part of the Property will be used or maintained as a dumping ground for rubbish or trash, and no garbage or other waste will be kept except in sanitary containers located within a Pump Station Building.

18. No animals, livestock, or poultry of any kind will be raised, bred, or kept on the Property.

19. No (a) above-ground utility service or transmission lines, (b) utility substations or (c) above-ground detention ponds will be permitted on the Property.

20. All Above-Ground Improvements and landscaping will be at all times maintained in good condition by the Grantee, its successors and assigns.

21. All stormwater from developed areas of the Property discharged from the developed areas of the Property onto the adjoining Beau Theriot Comanche Canyon Lands Preserve (the "Preserve") will be discharged in a manner whereby the discharged stormwater will be spread out to sheet flow overland, and not discharged in concentrated flows, so as to prevent erosion damage to the Preserve.

22. All exterior lighting on the Property will be shielded to protect properties which are covered by the Comanche Canyon Ranch Extraterritorial Jurisdiction Planned Unit Development Agreement of record in Document No. 2004054128, Official Public Records of Travis County, Texas (the "Comanche Canyon Ranch ETJ PUD") from light pollution. Exterior lights will be shielded so that all viewers of the Property and/or the Facility will not be able to directly view the source of light of a lighting facility or fixture.

23. Noise from the Facility will be controlled so that it does not exceed the sixty-five (65) decibels or lower, as measured at the outside of the Perimeter Walls, in order to avoid materially disturbing persons unaided by test and measurement devices who occupy property covered by the Comanche Canyon Ranch ETJ PUD. This noise restriction shall not apply to noise emanating from the Facility from time to time when Pump Station Building doors are being open and closed in connection with the operation of the Facility.

24. Vibration, emissions and odors from the Facility will be controlled, as measured at the outside of the Perimeter Walls, in order to avoid materially disturbing persons unaided by test and measurement devices who occupy property covered by the Comanche Canyon Ranch ETJ PUD.

25. Blasting on the Property will be tightly controlled and monitored so as to prevent any damage to persons or property.

26. The Facility will in general have the appearance reflected in the architectural rendering attached hereto as **Exhibit B** which was prepared by architect Marley Porter with Living Architecture and Construction Management, 4401 Cottonwood Drive, Cottonwood Shores, Texas 78657, Phone: 830-798-9310 who maintains the original color version of **Exhibit B** in his possession.

27. Construction activity and blasting on the Property will be restricted to the hours between 7:00 AM to 7:00 PM, Monday through Saturday provided however, shaft and tunnel excavation may take place twenty-four (24) hours per day and seven (7) days per week so long as excavated material is not hauled from the Property during the hours between 7:00 PM and 7:00 AM.

28. All construction traffic of Grantee, its employees, its contractors and subcontractors and the employees of such contractors and subcontractors to and from the Property will use Bullick Hollow Road and use of Oasis Bluff Drive and Comanche Trail by such construction traffic is prohibited.

28.A. Prior to commencing the actual construction of any phase of the Facility, as design progresses Grantee shall provide, at Grantee's expense, Grantor a copy of the applicable site development permit and construction plans in order for Grantor to provide Grantee any comments or suggestions regarding compliance with these Restrictions, at the following design completion milestones:

- (i) Thirty percent (30%) completion.
- (ii) Sixty percent (60%) completion.
- (iii) Ninety percent (90%) completion.
- (iv) One hundred percent (100%) completion.

As construction of each phase of the Facility progresses, Grantee shall provide, at Grantee's expense, Grantor copies of all certificates or other documentation by Grantee's inspecting engineer confirming that construction completed through the date of inspection conforms to the approved plans. Upon Grantor's request, Grantee shall, at Grantee's expense, within 90 days after final completion of each phase of the Facility, deliver to Grantor one complete set of copies of record drawings of the Facility prepared from contractor's as-built drawings.

29. Invalidity of any provision of these covenants or restrictions by court judgment or court order will in no way affect any other provision, and all other provisions will remain in full force and effect.

30. The covenants, conditions, and restrictions set out herein (the "**Restrictions**") will run with and bind the Property, and will inure to the benefit of, the following and their respective legal representatives, successors and assigns: (a) Grantor; or (b) any incorporated property owner association or home owner association which has authority over any of the lots located in any of the following subdivisions (collectively, the "**Comanche Canyon Ranch Subdivisions**");

- i. Comanche Canyon Ranch Section One, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200500185, Official Public Records of Travis County, Texas ("**CCR Section One**");
- ii. Comanche Canyon Ranch Area Two, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200600062, Official Public Records of Travis County, Texas ("**CCR Area Two**");
- iii. Comanche Canyon Ranch Area Two, Lot 1, Block C Resubdivision, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200800028, Official Public Records of Travis County, Texas ("**CCR Area Two, Lot 1, Block C Resub.**"); or

- iv. Comanche Canyon Ranch Area Two, Lot 35, Block B Resubdivision, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200800027, Official Public Records of Travis County, Texas ("**CCR Area Two, Lot 35, Block B Resub.**").

In the event of the violation of these Restrictions by Grantee, and such violation is not cured within thirty (30) days written notice to Grantee by Grantor or any one or more of the Comanche Canyon Subdivision Associations, then the entity giving such notice, acting on behalf of Grantor and all of such Comanche Canyon Subdivision Associations shall have all rights available at law or in equity for enforcement of the Restrictions.

31. The covenants, conditions and restrictions set out herein will remain in full force and effect in the event the Property or any portion thereof is removed from the Comanche Canyon Ranch ETJ PUD.

32. The purposes of the covenants, conditions and restrictions set out herein are as follows:

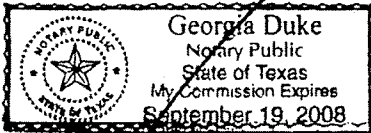
A. To protect the value of and the views from the lots located in the Comanche Canyon Ranch Subdivisions by requiring the Property to be developed and maintained in a harmonious and compatible manner consistent with the above-described lots and subdivisions. As of the Effective Date of this Deed, the Property and all of the Comanche Canyon Ranch Subdivision and all lots therein are part of the Comanche Canyon Ranch ETJ PUD and are intended to be covered by a harmonious and compatible development plan. Grantee shall be deemed to have developed the Property and to be maintaining the Property in such harmonious and compatible manner so long as Grantee complies with the covenants and restrictions set forth in paragraphs 1-31 above and with Exhibits A and B attached hereto.

B. To protect the Preserve from erosion caused by stormwater run-off flowing from developed portions of the Property.

GRANTOR HAS EXECUTED AND DELIVERED THIS SPECIAL WARRANTY DEED AND HAS CONVEYED THE PROPERTY AND GRANTEE HAS RECEIVED AND ACCEPTED THIS SPECIAL WARRANTY DEED AND HAS PURCHASED THE PROPERTY "AS IS", "WHERE IS", AND "WITH ALL FAULTS" AND WITHOUT REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL (EXCEPT FOR THE WARRANTY OF TITLE EXPRESSLY SET FORTH IN THIS DEED).

[Remainder of this page intentionally left blank; signature page follows.]

EXECUTED in multiple counterpart originals as of the date of the acknowledgements set forth below; to be effective however, as of July 31, 2008.



GRANTOR:

Comanche Canyon Development, Inc., a
Texas corporation

By: Robert H. Theriot

Printed Name: Robert H. Theriot
Title: President

**AGREED TO AND ACCEPTED BY
THE CITY OF AUSTIN, TEXAS**

By: Lauraine Rizer

Name: Lauraine Rizer

Title: Manager, Office of Contract and Land
Management

APPROVED AS TO FORM:

ANDREWS KURTH LLP

By: Cassie B. Stinson

Cassie B. Stinson, Partner

Special Counsel to City of Austin

RETURN TO:
NORTH AMERICAN TITLE
823 Congress Ave., Suite 1400
Austin, TX 78701

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7835.32448

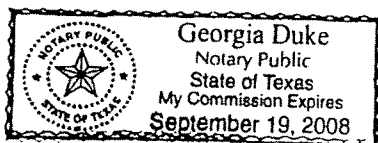
HOU:2805365.10

ACKNOWLEDGEMENTS

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 31st day of JULY, 2008, by Robert H. Theriot, president of Comanche Canyon Development, Inc., a Texas corporation on behalf of said corporation.



Georgia Duke
Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on July 30th, 2008, by Lauraine Rizer, Manager, Office of Contract and Land Management of the City of Austin, Texas, a Texas home rule municipality, on behalf of said municipality.

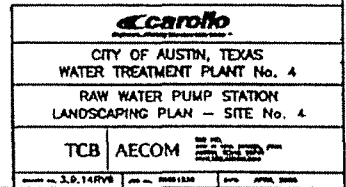


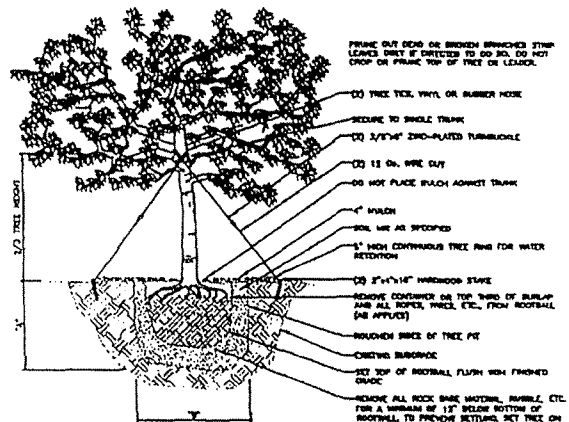
Marsha L. Schulz
Notary Public, State of Texas

AFTER RECORDING, RETURN TO:

City of Austin
Office of Contract and Land Management
Attention: Junie Marie Plummer
P. O. Box 1088
Austin, Texas 78767-8839
File #: 4037.01
TCAD No.: 01-5834-0201
01-5834-0202
01-5836-0101

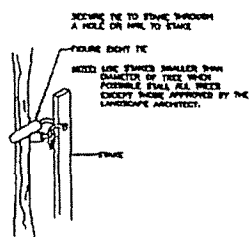
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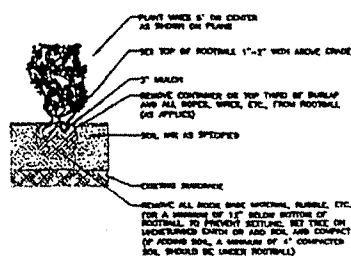


TREE PLANTING - DETAIL No. 1
FOR TREE WITH DRAINAGE 3" IN DIAMETER OR GREATER
N.T.S.

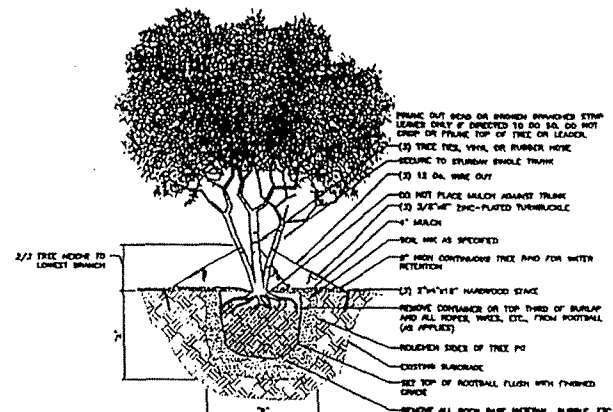
| CONTAINER SIZE | DEPTH "A" | WIDTH "B" |
|----------------|-----------|-----------|
| 1 GALLON | 12" | 18" |
| 2 GALLON | 14" | 20" |
| 5 GALLON | 16" | 24" |
| 10 GALLON | 18" | 26" |
| 15" BOX | 24" | 36" |
| 18" BOX | 26" | 38" |
| 1/2 BARRIER | 28" | 42" |
| 24" BOX | 30" | 42" |



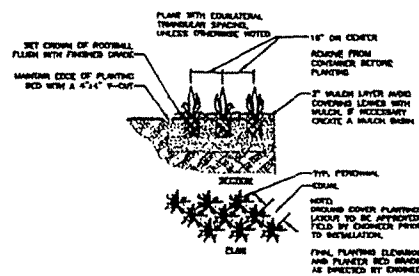
TREE TIE - DETAIL No. 3
N.T.S.



VINE BED PLANTING - DETAIL No. 4
N.T.S.

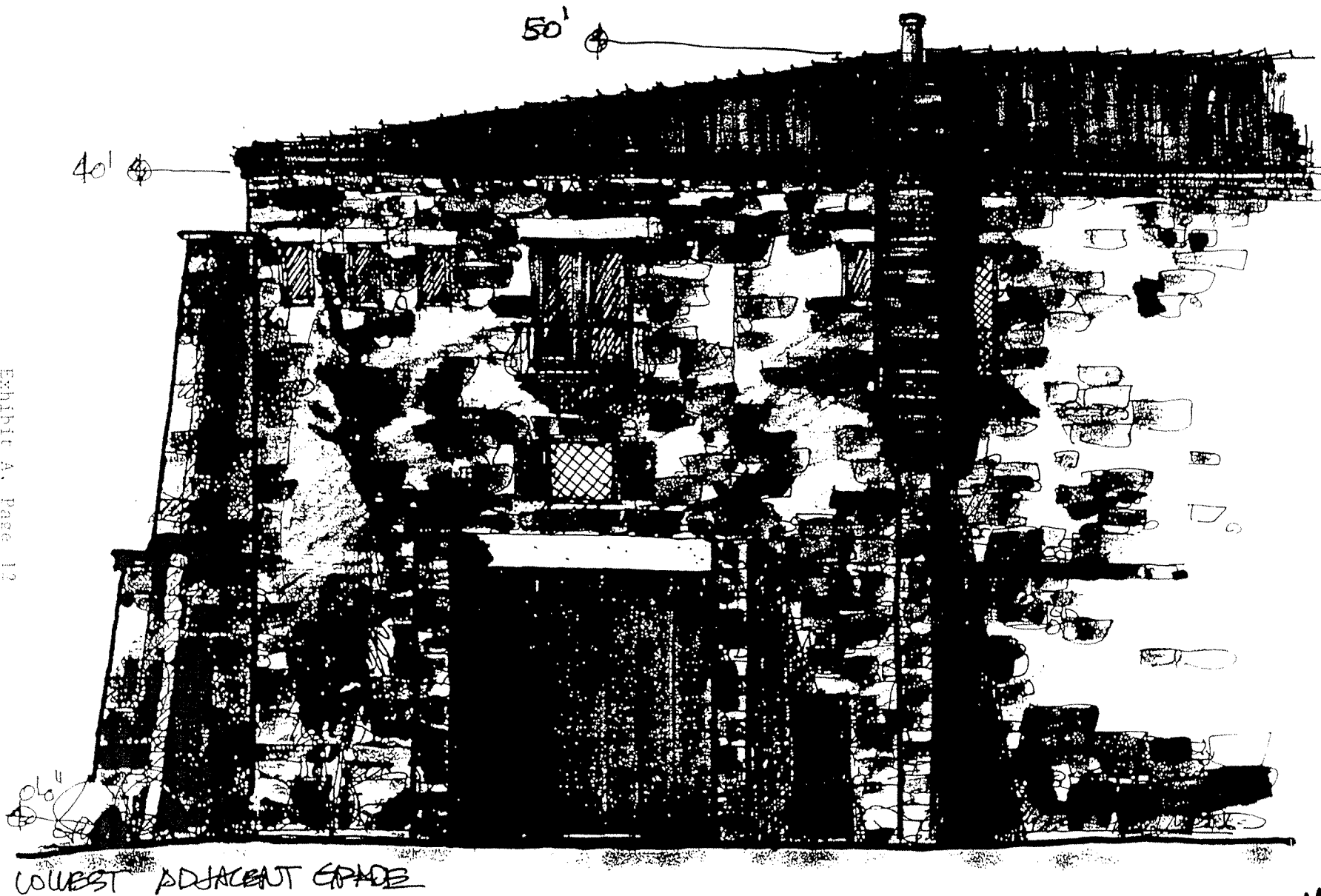


TREE PLANTING - DETAIL No. 2
FOR SMALLER TREES
N.T.S.



**GROUND COVER PLANTING
DETAIL No. 5**
N.T.S.

| | |
|---|-------|
| carollo <small>Professional Landscaping Services, Inc.</small> | |
| CITY OF AUSTIN, TEXAS WATER TREATMENT PLANT No. 4 | |
| RAW WATER PUMP STATION LANDSCAPING DETAILS | |
| TCB | AECOM |
| <small>PROJECT NO. 3.9.14RV44</small> <small>DATE: 08/11/08</small> <small>DATE: 08/11/08</small> | |



LOWEST ADJACENT GRADE

EXHIBIT "B"
PAGE 1 OF 1

Exhibit C

PERMITTED EXCEPTIONS

1. The following Restrictive Covenants of record itemized below:
 - a. Volume 13034, Page 27, Real Property Records of Travis County, Texas.
 - b. Document No. 2004026540, Official Public Records of Travis County, Texas.
 - c. Document No. 2004053529, Official Public Records of Travis County, Texas.
 - d. Document No. 2004054128, Official Public Records of Travis County, Texas.
 - e. Document No. 2005107955, Official Public Records of Travis County, Texas.
 - f. Document No. 2005109751, Official Public Records of Travis County, Texas.
 - g. Document No. 2005110584, Official Public Records of Travis County, Texas.
2. Overhead electric line and utility poles on and across the Property and fences lying off the Property lines as reflected on survey dated 4/11/2008 prepared by Gregorio Lopez, Jr., RPLS No. 5272.
3. Easement for Underground Water Tunnel granted to the City of Austin, as recorded in Volume 9678, Page 483, Real Property Records of Travis County, Texas.
4. 15' Wastewater Line Easement granted to Travis County Water Control & Improvement District No. 17, as recorded under County Clerk's Document No. 2004234548, Official Public Records of Travis County, Texas.
5. Critical Environmental Feature Buffer as shown on the subdivision plat recorded under Document No. 200600184, Official Public Records of Travis County, Texas.
6. Easement rights as set out on the subdivision plat recorded under Document No. 200600184, Official Public Records of Travis County, Texas.
7. All of the oil, gas and other minerals, together with all rights relating thereto, express or implied, as conveyed and/or reserved in documents recorded in Volume 3430, Page 1641, Volume 4572, Page 1205, Volume 5337, Page 240, and Volume 7185, Page 2295, Deed Records of Travis County, Texas.
8. Covenants providing for assessments as set out in instrument recorded under document No. 2005107955, Official Public Records of Travis County, Texas.
9. The rights of Travis County Water Control & Improvement District No. 17 to levy taxes and issue bonds.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2008 Jul 31 03:33 PM 2008129833

DAVISD \$68.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS



MACIAS & ASSOCIATES, L.P.
LAND SURVEYORS

EXHIBIT "A"

DHD Ventures, LTD.
To
The City of Austin
December 30, 2007

LEGAL DESCRIPTION

OF A 20.357 ACRE (886,753 SQUARE FOOT) TRACT OF LAND OUT OF THE S.T. BULLOCK SURVEY NO. 76, ABSTRACT NO. 2624 AND THE RIORDAN SURVEY NO. 76, ABSTRACT NO. 2618 IN TRAVIS COUNTY, TEXAS. SAID 20.357 ACRE TRACT ALSO BEING OUT OF THE REMAINING PORTION OF THE 312.76 ACRE TRACT CONVEYED TO ROBERT H. THERIOT BY DEED DATED JANUARY 9, 1998 BY INSTRUMENT OF RECORD IN VOLUME 13294, PAGE 1317 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS. AS SHOWN ON THE ACCOMPANYING SKETCH AND DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

POINT OF BEGINNING, at a ½" iron rod found on the south line of a 34.85 acre tract of land conveyed to MCPMT, LTD. by instrument of record in volume 4286, page 749, deed records of Travis County Texas, the northwest corner of a 42.00 acre tract conveyed to John E. and John M. Joseph, Trustees, by instrument of record in volume 11175, page 150 in the real property records of Travis County, Texas, an exterior corner of the remaining Theriot 312.76 acre tract, the northeast corner of a Cellular Antenna Site Lease and a corner of this tract;

THENCE, S27°03'26"W 465.17 feet with an east line of this tract and a west line of the 42.00 acre tract to a ½" iron road with a "McAngus Surveying" cap;

THENCE, traversing through the 312.76 acre tract the following twenty three (23) courses;

1. N84°42'32"W, 223.30 feet to a ½" iron road with a "McAngus Surveying" cap found;
2. N74°35'48"W, 195.30 feet to a magnetic nail found;
3. N41°52'08"W, 140.24 feet to a ½" Iron road with a "McAngus Surveying" cap found;
4. N01°32'12"E, 138.23 feet to a ½" iron road with a "McAngus Surveying" cap found;
5. N45°46'37"W, 121.84 feet to a cotton spindle found;
6. N75°44'45"W, 84.61 feet to a ½" iron road with a "Macias" plastic cap set;
7. N84°38'28"W, 21.74 feet to a magnetic nail found;
8. N23°30'46"W, 320.56 feet to a ½" iron road with a "McAngus Surveying" cap found;
9. N24°20'57"E, 307.36 feet to a ½" iron road with a "McAngus Surveying" cap found;

10. N04°34'51"E, 147.37 feet to a ½" iron road with a "McAngus Surveying" cap found;
 11. N30°19'35"W, 173.45 feet to a cotton spindle found;
 12. N17°11'21"E, 109.07 feet to cotton spindle found;
 13. N59°12'38"E, 99.88 feet to a ½" iron road with a "McAngus Surveying" cap found;
 14. N84°11'23"E, 85.38 feet to a ½" iron road with a "McAngus Surveying" cap found;
 15. N26°32'09"E, 145.69 feet to a ½" iron road with a "McAngus Surveying" cap found;
 16. N62°32'21"E, 63.66 feet to a ½" iron road with a "McAngus Surveying" cap found;
 17. N18°20'44"E, 105.92 feet to a ½" iron road with a "McAngus Surveying" cap found;
 18. N72°31'09"E, 65.93 feet to a cotton spindle found;
 19. N31°45'27"E, 134.99 feet to a ½" iron road with a "Macias" plastic cap set;
 20. N81°21'46"E, 130.92 feet to a ½" iron road with a "McAngus Surveying" cap found;
 21. N35°19'41"E, 360.36 feet to a ½" iron road with a "Macias" plastic cap set;
 22. N24°41'57"W, 107.79 feet to a ½" iron road with a "McAngus Surveying" cap found;
 23. N20°38'53"E, 56.50 feet to a ½" iron road with a "McAngus Surveying" cap found on an east line of this tract and the west line of said 34.85 acre tract;
- THENCE**, with the east line of this tract and the west line of said 34.85 acre tract, N27°12'10"E, 266.14 feet to a ½" iron rod found for a corner;
- THENCE**, S61°46'47"E, 337.29 feet to the POINT OF BEGINNING and containing 20.357 Acres (886,753 SQUARE FEET) of land.

BEARING BASIS NOTE

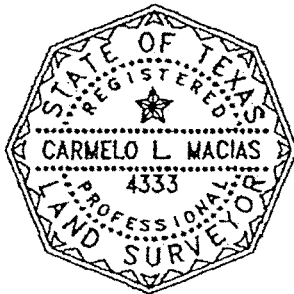
All bearings described herein are based upon the Texas State Plane Coordinates System, NAD 83 (1986) South Central Zone.

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

That I, Carmelo Lettere Macias, a Registered Professional Land Surveyor, do hereby state that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this 30th day of December, 2007, A.D.



Macias & Associates, L.P.
5410 South 1st Street
Austin, Texas 78745
512-442-7875

Carmelo L. Macias
Carmelo L. Macias
Registered Professional Land Surveyor
No. 4333 – State of Texas

REFERENCES

Austin Grid No. M 33
TCAD PARCEL ID NO. 01-51371-0101
Volume 13294, Page 1317

MACIAS & ASSOCIATES, L.P., PROJECT NO. 425-01-07

J: jobs/ctw/20AcreTract



DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE PERMIT

3-201
(1/97)

2. AUTHORITY-STATUTES
16 USC 1539(a)(1)(B)
REGULATIONS (Attached)
50 CFR §§ 13 & 17

3. NUMBER
TE-004683-3

4. RENEWABLE
[**x**] YES
[] NO

5. MAY COPY
[**x**] YES
[] NO

6. EFFECTIVE
11/20/2008

7. EXPIRES
7/17/2030

1. PERMITTEE

Comanche Canyon Development, Inc.
6535 Comanche Trail
Austin, Texas 78732
512/266-3993

8. NAME AND TITLE OF PRINCIPAL OFFICER (if #1 is a business)
Mr. Robert H. Theriot, President

9. TYPE OF PERMIT
Endangered Species – Incidental Take

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED
Approximately 446-acres Comanche Canyon Development, Inc., in Travis County, Texas

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2, ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORDANCE WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW. THIS PERMIT DOES NOT WAIVE THE OBLIGATION TO ABIDE BY OTHER FOREIGN, STATE, LOCAL OR FEDERAL LAW IN CARRYING OUT AUTHORIZED ACTIVITIES.
- C. VALID FOR USE BY PERMITTEES NAMED ABOVE.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE UNDERSTANDS AND AGREES TO ABIDE BY THE "GENERAL CONDITIONS FOR NATIVE ENDANGERED AND THREATENED WILDLIFE SPECIES PERMITS" (**copy enclosed**).

12. REPORTING REQUIREMENTS Written annual reports of the years activities, including presence/absence surveys for the golden-cheeked warbler will be submitted by October 1 of each year.

ISSUED BY:

TITLE

Assistant Regional Director

DATE

12/02
11/20/2008

- E. The Permittee is authorized for take of golden-cheeked warbler (*Dendroica chrysoparia*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Tooth Cave spider (*Neoleptoneta myopica*), and Tooth Cave ground beetle (*Rhadine persephone*) on the 446-acre property, incidental to activities necessary for the residential and commercial construction described in the Permittee's application. The City of Austin is authorized for the take of endangered species listed in this permit condition E incidental to activities necessary for the construction, operation, maintenance, and repair on Area 3 (also known as Tract 2) of a raw water pump station and related facilities as described in the attached Special Warranty Deed. Area 3 includes lots 40, 41, and 42, Block B, COMANCHE CANYON RANCH AREA THREE, a subdivision according to the map or plat recorded in Document No. 200600184 of the Plat Records, Official Public Records of Travis County, Texas. The City of Austin is also authorized for take of the endangered species listed in this permit Condition E incidental to activities necessary for the construction, operation, maintenance, and repair on Area 4 (also known as Tract 1) of a water treatment facility and related facilities. Area 4 is located approximately 800 feet west of RM 620, on the east central portion of the Comanche Canyon Ranch Property [as legally described in Exhibit A].
- F. The Permittee or his assignee will only clear vegetation in, or within 300 feet of, golden-cheeked warbler habitat during the time of the year when golden-cheeked warblers are not breeding (August 1 through February 28) unless breeding season surveys performed by a U.S. Fish and Wildlife Service (Service)-permitted biologist (according to Service guidelines) indicate that no golden-cheeked warblers are present within 300 feet of the desired activity. Construction activities in or within 300 feet of golden-cheeked warbler habitat may be initiated during the time of year when golden-cheeked warblers are present so long as such construction follows permitted clearing in a prompt and expeditious manner indicating a continuous activity.
- G. The Permittee or his assignee will minimize clearing for construction of buildings, streets, and other areas of impervious cover to the maximum extent practicable.
- H. The Permittee or his assignee shall be consistent with the current practices recommended by the Texas Forest Service to prevent the spread of oak wilt during clearing for construction within the proposed development areas.
- I. The Permittee or his assignee will comply with the label guidelines for application of herbicides and pesticides.
- J. The Permittee or his assignee will prohibit the use of deer feeders or bird seed feeders in residential yards and in preserve areas through deed restrictions.
- K. The Permittee or his assignee will prohibit free-roaming cats and dogs through deed restriction.
- L. Excavation of the property will not require a site geologist to be present, but the procedures contained in Conditions M through O will still be followed if any caves, karst features, or subterranean voids are encountered.

- M. If any caves, karst features, or subterranean voids are encountered during construction, then construction work within 500 feet of the encountered voids will halt until project environmental consultants have completed necessary evaluations. The Service will be notified immediately. The Permittee will have a qualified geologist or geohydrologist familiar with karst invertebrates respond immediately to evaluate the void geologically to determine if it has the potential to contain endangered karst invertebrate habitat. If the potential for habitat is evident, the Permittee will have the feature examined by a qualified karst invertebrate biologist, approved by the Service, for the presence of the listed karst invertebrates. Three biological collection surveys will be conducted on three separate days over a period not greater than one week to determine the presence or absence of the listed invertebrates or other species of concern. Between surveys, voids should be covered to prevent drying, but still allow nutrient input. A report of the surveys, including climate data inside and outside of the cave, will be submitted to the Service immediately.
- N. If no endangered, threatened or species of concern are determined to be present in an encountered feature, environmental consultants will issue specific instructions in accordance with standard Texas Natural Resource Conservation Commission accepted practices, as applicable, for any particular void. If sealed, voids will not allow any impacts or contamination into the karst ecosystem. The Service will be notified of methods used for dealing with the void. Construction activity will then resume with the carrying out of those specific instructions. The Service will be notified of findings prior to resuming construction activities.
- O. If endangered, threatened, or species of concern are determined to be present within an encountered feature, the Permittee will consult with the Service to determine on-site avoidance measures and the Permittee will implement said measures. Upon completion or implementation of the avoidance procedures (following inspection and approval by the environmental consultants), the work may resume.
- P. Approximately 336 acres will be preserved in perpetuity by being donated to Travis County or another conservation entity approved by the Service. The operation and maintenance of the preserve will be turned over to Travis County or other conservation entity approved by Service through a conservation easement to be managed according to Balcones Canyonlands Preserve land management plans.
- Q. After considering carefully the direct and indirect impacts of the development, construction, and occupation of Comanche Canyon Development, including associated roads and utilities, and taking into account the substantial avoidance of habitat areas on the property and the areas that the Permittee will maintain as preserve, the Service has concluded that the lands considered for preserve represent mitigation of impacts to the golden-cheeked warbler in excess of that required to adequately mitigate for the impacts of the development project. Such excess mitigation is in the amount of 123 acres of golden-cheeked warbler habitat. The Permittee (subject to Service approval) will be entitled to "bank" this excess mitigation in perpetuity for use in connection with possible future revisions to project envelopes or other projects pursued by the Permittee, or for transfer and sale to third-parties needing to provide mitigation for projects within the same recovery unit for the golden-cheeked warbler. The Permittee and the Service will establish a record-keeping system for tracking ownership and utilization of the excess mitigation credits.

Each of the excess mitigation credits will be construed by the Service as providing the same mitigation value for similar habitat type (i.e., zone 1 or 2) as a one-acre golden-cheeked warbler Balcones Canyonlands Preserve Participation Certificate or one acre of golden-cheeked warbler habitat of long-term preserve quality.

- R. The Permittee will provide funding for the operation and maintenance of the approximately 336 acres as a preserve for golden-cheeked warbler. The amount of funding will be agreed upon by the Permittee and Travis County or other conservation entity prior to issuance of the Section 10(a)(1)(B) permit.
- S. The Permittee or his assignee, to the maximum extent practicable, will allow vegetation within preserve areas of Comanche Canyon Development that currently do not support golden-cheeked warbler habitat to be allowed to succeed to a wooded state in order to increase the amount of potentially suitable golden-cheeked warbler habitat on site.
- T. The Permittee or his assignee will phase off cattle or other domestic livestock from the property over a period of four years. No livestock of any kind will be allowed in the preserve areas after that time.
- U. Activities implementing the conservation measures will be reported in an annual report to the Service due on the anniversary of permit issuance.
- V. Compliance monitoring surveys of golden-cheeked warbler territories will be conducted and mapped for the Comanche Canyon Development Tract every other year from the construction phase through the second year following attainment of 95% project buildout to assess how development of the property affects the local warbler population.
- W. Any unforeseen circumstances or preserve conditions determined to be detrimental to golden-cheeked warblers will trigger the need to consult with the Service for advice on adaptive management. The preserve manager must report immediately, any site conditions or disturbances found of which it does not possess a ways or means to readily correct.
- X. If vandalism of preserves is detected, the Service as well as local law enforcement authorities, will be immediately notified. Any effects of vandalism will be documented and then corrected, as appropriate, as quickly as possible.
- Y. Storm damage to preserves will be assessed and documented as soon as possible. The Service will be notified and corrective measures implemented, as appropriate.
- Z. The Permittee shall immediately notify the Fire Department and the Service of any fire, wild or deliberate. Following extinguishment and assessment of any impacts corrective actions will be implemented, as appropriate.
- AA. In the case of spills of hazardous materials on roadways or lawns, the Permittee shall immediately notify the Fire Department who has spill response capability and plans. The Permittee shall immediately notify the Service and begin assessment of any damages.

- BB. Adjacent landowners surrounding Comanche Canyon Development may conduct activities deemed potentially damaging to the preserve areas. In such event, the Service would be immediately notified and corrective measures implemented by the Permittee, as appropriate.
- CC. There are always possibilities for unforeseen circumstances to occur. In these cases, such circumstances will be assessed for potential impacts and corrective measures implemented by the Permittee, as appropriate, in consultation with the Service.
- DD. If Travis County accepts the conservation easement for the preserve, then they will manage the land according to the Balcones Canyonlands Preserve regional permit (PRT #788841) and approved land management plans.
- EE. Written annual reports of the years activities, including presence/absence surveys for the golden-cheeked warbler as described in the implementing agreement and status of clearing and construction, will be submitted by October 1 of each year to the U.S. Fish and Wildlife Service Office 10711 Burnet, Suite 200, Austin, Texas 78758; and to the U.S. Fish and Wildlife Service, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103.
- FF. Upon locating a dead, injured, or sick golden-cheeked warbler, or any other endangered or threatened species, the Permittee is required to contact the Service's Law Enforcement Office, San Antonio, Texas, (210) 681-8419, for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, the Permittee and its contractor/subcontractor have the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.
- GG. Terms and conditions of this permit shall be binding on and for the benefit of the Permittee and their respective successors and assigns. If the permit requires an amendment because of change of ownership, the Service will process that amendment without the requirement of the Permittee preparing any new documents or providing any mitigation over and above that required in the original permit. The construction activities proposed or in progress under an original permit may not be interrupted provided the required special conditions of an issued permit are being followed.
- HH. If during the tenure of this permit the project design and/or the extent of the habitat impact described in the habitat conservation plan is altered, such that there may be an increase in the anticipated take of the golden-cheeked warbler, the Permittee is required to contact the Service and obtain authorization and/or amendment of the permit before commencing any construction or other activities that might result in take beyond that described in the Environmental Assessment/Habitat Conservation Plan (EA/HCP).

If a conservation entity other than Travis County manages the preserve, then the following adaptive management and monitoring measures will be implemented:

- II. A representative of the management entity will attend meetings of the Balcones Canyonlands Preserve Land Management Committee.
- JJ. The preserve areas of the Comanche Canyon Development Tract will be monitored every other year by the conservation entity for indications that the health of the golden-cheeked warblers (i.e., population) or their habitat is beginning to be negatively impacted by other animals or other factors. Annual golden-cheeked warbler territorial surveys following Service approved protocol will be conducted in the preserve area and results reported to the Service. The preserve area should be monitored for the occurrence of these factors, such as an increase in the number of white-tailed deer on the preserve, which could directly impact the golden-cheeked warbler or its habitat. Aspects of the habitat that should be monitored may include, but are not limited to, a decline in oak seedling recruitment, indications of increased browsing pressure, a prevalence of fire ant mounds, and the threat of wildfire. Additionally, the tract will be monitored for a relatively high number of potential mammalian predators of golden-cheeked warblers, indications of excessive cowbird parasitism, and for indirect or direct human disturbances.
- KK. Deer and feral hogs often occur in greater density adjacent to suburban areas than in undeveloped areas due to greater availability of food and lower predation rates. High densities of deer and feral hogs may have a long-term adverse affect on the abundance and distribution of deciduous tree species in the Comanche Canyon Development preserve areas by increasing browsing pressure on seedlings and saplings. The subsequent decrease in the deciduous tree component of the forested areas would lead to an overall decrease in the habitat value of the area for golden-cheeked warblers. Therefore, if the effects of excessive browsing pressure or a lack of oak seedling recruitment are noticed, the conservation entity will coordinate with the Service to determine appropriate techniques to control browsing. Such techniques may include fencing, hunting, and/or other deer number reduction programs. Through deed restriction, deer feeders in residential yards and in preserve areas are prohibited because supplemental feeding could contribute to an increased deer population. The preserve area will be available for deer censusing conducted by the state or other agencies interested in assessing deer and feral hog population levels.
- LL. Some problem mammals which predate songbird eggs and young are domestic and feral cats, raccoons, opossums, and skunks. If home/business owners begin to notice an increase in the number of human interactions with raccoons, skunks, or opossums, or other indicative signs, such as an increase in the amount of scat observed, a live-trapping program to reduce the number of mammalian predators should be implemented. Such a program should only be implemented after consultation with the Service.
- MM. Imported red fire ants have been recently shown to prey upon the chicks of arboreal nesting birds. If fire ant mounds are encountered during routine monitoring activities, then fire ants may be controlled with an Integrated Pest Management program using approved chemicals and bait formulations. Fire ant control should be designed to minimize impact on native ants and other flora and fauna.

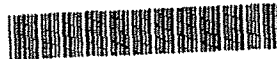
- NN. Brown-headed cowbirds, an open-field species, are well known for parasitism of songbird nests. If the conservation entity determines that cowbird trapping is necessary on the Comanche Canyon Development tract, the Permittee will cooperate with the Service and the conservation entity in the placement and operation of cowbird traps.
- OO. Development of the Comanche Canyon Development tract should not appreciably increase the potential for occurrence of a catastrophic wildfire within the proposed preserve areas. If the presence of fire breaks on the Comanche Canyon Development tract is determined necessary by the Service and the Permittee, such fire breaks would normally be created outside of preserve areas to avoid destruction of golden-cheeked warbler habitat. However, it is possible that a prolonged drought could occur that would greatly increase the potential for a catastrophic wildfire event. In such a case, the security provided by the creation of fire breaks within preserve areas may outweigh the loss of a small amount of golden-cheeked warbler habitat. The Permittee will seek Service approval of any fire breaks to be created within preserve areas, prior to construction. In the event of a drought, signs will be placed at prominent locations around the preserve warning of the fire hazard conditions.
- PP. Any activities occurring within preserve areas outside of the golden-cheeked warbler breeding season with potential to adversely affect golden-cheeked warbler habitat (e.g. trails) will be coordinated with the Service. Motorized vehicles will be prohibited from preserve areas at all times, unless otherwise allowed by the Service to facilitate operation and maintenance of preserve areas. Mountain biking and horseback riding in the preserve area will be prohibited.
- QQ. Clearing for construction of buildings, streets, and other areas of impervious cover will be minimized to the maximum extent practicable. Areas outside of platted lots that are disturbed during construction, but are not occupied by impervious surfaces, will be replanted with native oaks and other native vegetation.
- RR. If, as a result of a violation, default, or noncompliance of this permit by the Permittee, the City of Austin, or other landowner within the area covered by this permit, the Service may seek to suspend, terminate, or revoke this permit for reasons not the fault of the non-defaulting landowner, and the non-defaulting landowner is otherwise in compliance with the terms of this permit, the Service shall seek to craft a remedy that does not affect the non-defaulting landowner's rights, benefits, and responsibilities under the permit prior to suspending, terminating, or revoking this permit. If it is not practicable to so craft a remedy then the Service must nonetheless suspend, terminate, or revoke this permit. The Service will process for issuance to any such non-defaulting landowner a permit conferring the same rights, benefits, and responsibilities with respect to the non-defaulting landowner's property as provided under this permit, without additional requirements of conditions beyond those applicable to such non-defaulting landowner under this permit.

-----End of Permit Terms and Conditions Permit # TE-004683-3-----

16

14663-07-00426 GAD

RECORDED BY
NORTH AMERICAN TITLE



WD 2008129833
14 PGS

14

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS THAT:
COUNTY OF TRAVIS §

Under the threat of condemnation by the Grantee named herein, Comanche Canyon Development, Inc., a Texas corporation ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantor in hand paid by CITY OF AUSTIN, a home rule municipal corporation situated in the Counties of Travis, Williamson and Hays, in the State of Texas ("Grantee"), whose mailing address is P.O. Box 1088, Austin, Travis County, Texas 78767, Attn: Real Estate Services Division, the receipt and sufficiency of which consideration is hereby acknowledged and confessed, and for which no lien or encumbrance, express or implied, is retained, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY, unto Grantee, subject to all of the reservations, exceptions and other matters set forth or referred to herein, the following described real property, together with all improvements thereon, if any, and any and all rights and appurtenances pertaining to the "Property", including any development rights, utility rights, minerals, mineral rights, mineral royalty interests, water rights, adjacent streets, alleys, and rights of way (collectively the "Property"), to-wit:

Lots 40, 41 and 42, Block B, Comanche Canyon Ranch Area 3, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200600184, Official Public Records of Travis County, Texas.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, and Grantee's successors or assigns, forever; and, subject to all of the matters set forth or referred to herein, Grantor does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or part thereof, by, through, or under Grantor, but not otherwise; provided, however that this conveyance is made by Grantor and accepted by Grantee subject to: (a) all of the title exceptions revealed in or by the recorded documents and other matters listed on **Exhibit C** attached hereto and incorporated herein by reference; (b) all regulations, restrictions, laws, statutes, ordinances, obligations or other matters which affect the Property and which are imposed by or exist by reason of any regulatory, governmental, or quasi-governmental districts, entities, agencies, authorities or other bodies of any kind or nature; (c) all standby fees, taxes and assessments by any taxing authority for the current and all subsequent years, and all liens securing the payment of any of the foregoing; (d) all reservations, restrictions, covenants, conditions, and other matters set forth or referred to in this Deed; and (e) with regards to any and

all easements and or restrictive covenants previously granted directly to Grantee and covering any part of the Property, Grantor and Grantee hereby expressly acknowledge, stipulate and agree that the doctrine of merger will not apply to such Permitted Exceptions and that Grantee's rights under such easements will remain in effect separately from the title to the Property conveyed in this Deed, even though the underlying fee ownership of the Property, or any parts thereof, and such easements are now or hereafter vested in one party or entity.

Furthermore, Grantor does hereby impress the Property with the following restrictions:

1. The use of the property will be restricted to a raw water pump station facility (the "Facility").
2. The Facility will consist of (a) underground structures and equipment (the "Underground Improvements") and (b) above-ground structures and equipment (the "Above-Ground Improvements").
3. The Above-Ground Improvements will be restricted to:
 - a. Not more than three (3) pump station buildings (the "Pump Station Buildings"),
 - b. Pump station motors, furniture, equipment, machinery, instruments and carbon silos all located inside the Pump Station Buildings,
 - c. Driveways, drives and walkways (the "Access Ways"),
 - d. Water quality ponds (the "Water Quality Ponds"),
 - e. Retaining walls (the "Retaining Walls"),
 - f. (i) A perimeter wall (the "Perimeter Wall") and (ii) perimeter wall gates (the "Perimeter Wall Gates"), in each case located eight (8) feet inside the perimeter boundary of the Property, which fence may be constructed in two (2) phases as provided in paragraph 8 below,
 - g. A perimeter ranch fence (the "Perimeter Ranch Fence") which will be constructed around the perimeter of the portion of the Property not surrounded by the initial or first phase of the Perimeter Wall until the second phase of the Perimeter Wall is constructed as provided for in paragraph 8 below,
 - h. Raw water transmission lines (the "Above-Ground Raw Water Transmission Lines"),
 - i. One (1) raw water transmission line surge tank ("Surge Tank") for each Pump Station Building,

j. Four (4) electrical transformers ("Electrical Transformers") for each Pump Station Building,

k. Fire hydrants, and

l. Signage that complies with the City of Austin, Texas sign ordinance.

4. Each Pump Station Building will:

a. Be restricted to a footprint of not more than 18,000 square feet above-ground.

b. Be restricted to a maximum height of fifty (50) feet measured from the lowest exterior grade contiguous to the individual Pump Station Building.

c. Have exterior façades, including variable height buttresses and fake chimneys, all constructed of indigenous stone of muted natural earth tones in color, specifically excluding Austin White Chop.

d. Have roofs constructed of mission style clay, concrete or metal tiles of variegated muted earthtone color.

e. Have window shutters and doors of muted earth tones in color.

5. Each Water Quality Pond and all Access Ways will be constructed with integral color concrete of a muted natural earth tone in color and the walls of each Water Quality Pond will have on the top thereof 5' high decorative metal fencing.

6. All Retaining Walls will be constructed of either (a) approximately 18" x 18" x 5' long limestone blocks stacked in a raked pattern back and will not exceed 9' high in any lift before terracing or (b) approximately 12" wide integral color concrete of a muted earth tone in color with stamped pattern or (c) approximately 12" wide integral color interlocking concrete masonry units of a muted earth tone in color or (d) a naturally cut stone face with a lip to retain top soil if a geotechnical report verifies the appropriateness thereof, in which case the lip will consist of limestone blocks being approximately 18" x 18" x 5' long in size.

7. The Perimeter Wall will be at least 8' in height and will be constructed (a) of pre-cast concrete 2' tall panels, muted earth tone colored (on both sides of each pre-cast panel), in dry-stack pattern and (b) dry-stack integral muted earth tone color pre-cast columns at a maximum 10' on center with the columns of equal height as the Perimeter Wall. All gates in the Perimeter Wall will be constructed of decorative metal or wood which gates can not be seen through and which will have decorative metal hinges, straps and supports. The Perimeter Wall may be constructed in two phases. The initial or first phase of the Perimeter Wall will surround all of the portions of the Property upon which Phase 1 and Phase 2 of the Facility are to be constructed as indicated on **Exhibit A** which is attached hereto and made a part hereof for all purposes. The initial or first phase of the Perimeter Wall will be constructed and in place prior to

the Facility being placed in operation. The second phase of the Perimeter Wall will be constructed and in place prior to the time that the portion of the Facility to be constructed on the portion of the Property surrounded by the Perimeter Ranch Fence is placed in operation.

8. The Perimeter Ranch Fence will be constructed of five-strand barbwire with steel posts and with one or more ranch gates.

9. No security razor wire, barbwire or anything similar thereto shall be placed on (i) the Perimeter Wall, (ii) the Perimeter Wall gates, (iii) the Perimeter Ranch Fence (except for five-strand barbwire) and (iv) the Perimeter Ranch Fence gates.

10. The Above-Ground Raw Water Transmission Lines will be maintained in a painted muted earth tone color, unless otherwise mandated by the State of Texas.

11. All Surge Tanks will be maintained in a painted muted earth tone color unless otherwise mandated by the State of Texas and will be constructed and maintained in a horizontal position.

12. All Electrical Transformers will be located between a Pump Station Building and a Retaining Wall.

13. The Property will be landscaped with predominantly native and naturalized plants selected from the "Grow Green" list approved by the City of Austin ("Native Vegetation").

14. Landscaping for the portion of the Property upon which Phase 1 and Phase 2 of the Facility are to be constructed will be designed to soften the visual impact of the Pump Station Buildings and will be substantially as indicated in **Exhibit A** which is attached hereto and made a part hereof for all purposes. Landscaping for the balance of the Property will be in substantial conformance with the landscaping reflected in **Exhibit A** and will be installed at the time that said balance of the Property is developed by Grantee.

15. There will be no on-site rock crushing or other processing of excavated material on the Property.

16. No oil well drilling, oil development operations, oil refining, quarrying, or mining operations of any kind will be permitted on the Property, nor will oil wells, oil tanks, or mineral excavations be permitted on the Property.

17. No part of the Property will be used or maintained as a dumping ground for rubbish or trash, and no garbage or other waste will be kept except in sanitary containers located within a Pump Station Building.

18. No animals, livestock, or poultry of any kind will be raised, bred, or kept on the Property.

19. No (a) above-ground utility service or transmission lines, (b) utility substations or (c) above-ground detention ponds will be permitted on the Property.

20. All Above-Ground Improvements and landscaping will be at all times maintained in good condition by the Grantee, its successors and assigns.

21. All stormwater from developed areas of the Property discharged from the developed areas of the Property onto the adjoining Beau Theriot Comanche Canyon Lands Preserve (the "Preserve") will be discharged in a manner whereby the discharged stormwater will be spread out to sheet flow overland, and not discharged in concentrated flows, so as to prevent erosion damage to the Preserve.

22. All exterior lighting on the Property will be shielded to protect properties which are covered by the Comanche Canyon Ranch Extraterritorial Jurisdiction Planned Unit Development Agreement of record in Document No. 2004054128, Official Public Records of Travis County, Texas (the "Comanche Canyon Ranch ETJ PUD") from light pollution. Exterior lights will be shielded so that all viewers of the Property and/or the Facility will not be able to directly view the source of light of a lighting facility or fixture.

23. Noise from the Facility will be controlled so that it does not exceed the sixty-five (65) decibels or lower, as measured at the outside of the Perimeter Walls, in order to avoid materially disturbing persons unaided by test and measurement devices who occupy property covered by the Comanche Canyon Ranch ETJ PUD. This noise restriction shall not apply to noise emanating from the Facility from time to time when Pump Station Building doors are being open and closed in connection with the operation of the Facility.

24. Vibration, emissions and odors from the Facility will be controlled, as measured at the outside of the Perimeter Walls, in order to avoid materially disturbing persons unaided by test and measurement devices who occupy property covered by the Comanche Canyon Ranch ETJ PUD.

25. Blasting on the Property will be tightly controlled and monitored so as to prevent any damage to persons or property.

26. The Facility will in general have the appearance reflected in the architectural rendering attached hereto as **Exhibit B** which was prepared by architect Marley Porter with Living Architecture and Construction Management, 4401 Cottonwood Drive, Cottonwood Shores, Texas 78657, Phone: 830-798-9310 who maintains the original color version of **Exhibit B** in his possession.

27. Construction activity and blasting on the Property will be restricted to the hours between 7:00 AM to 7:00 PM, Monday through Saturday provided however, shaft and tunnel excavation may take place twenty-four (24) hours per day and seven (7) days per week so long as excavated material is not hauled from the Property during the hours between 7:00 PM and 7:00 AM.

28. All construction traffic of Grantee, its employees, its contractors and subcontractors and the employees of such contractors and subcontractors to and from the Property will use Bullick Hollow Road and use of Oasis Bluff Drive and Comanche Trail by such construction traffic is prohibited.

28.A. Prior to commencing the actual construction of any phase of the Facility, as design progresses Grantee shall provide, at Grantee's expense, Grantor a copy of the applicable site development permit and construction plans in order for Grantor to provide Grantee any comments or suggestions regarding compliance with these Restrictions, at the following design completion milestones:

- (i) Thirty percent (30%) completion.
- (ii) Sixty percent (60%) completion.
- (iii) Ninety percent (90%) completion.
- (iv) One hundred percent (100%) completion.

As construction of each phase of the Facility progresses, Grantee shall provide, at Grantee's expense, Grantor copies of all certificates or other documentation by Grantee's inspecting engineer confirming that construction completed through the date of inspection conforms to the approved plans. Upon Grantor's request, Grantee shall, at Grantee's expense, within 90 days after final completion of each phase of the Facility, deliver to Grantor one complete set of copies of record drawings of the Facility prepared from contractor's as-built drawings.

29. Invalidity of any provision of these covenants or restrictions by court judgment or court order will in no way affect any other provision, and all other provisions will remain in full force and effect.

30. The covenants, conditions, and restrictions set out herein (the "**Restrictions**") will run with and bind the Property, and will inure to the benefit of, the following and their respective legal representatives, successors and assigns: (a) Grantor; or (b) any incorporated property owner association or home owner association which has authority over any of the lots located in any of the following subdivisions (collectively, the "**Comanche Canyon Ranch Subdivisions**");

- i. Comanche Canyon Ranch Section One, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200500185, Official Public Records of Travis County, Texas ("**CCR Section One**");
- ii. Comanche Canyon Ranch Area Two, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200600062, Official Public Records of Travis County, Texas ("**CCR Area Two**");
- iii. Comanche Canyon Ranch Area Two, Lot 1, Block C Resubdivision, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200800028, Official Public Records of Travis County, Texas ("**CCR Area Two, Lot 1, Block C Resub.**"); or

- iv. Comanche Canyon Ranch Area Two, Lot 35, Block B Resubdivision, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200800027, Official Public Records of Travis County, Texas ("*CCR Area Two, Lot 35, Block B Resub.*").

In the event of the violation of these Restrictions by Grantee, and such violation is not cured within thirty (30) days written notice to Grantee by Grantor or any one or more of the Comanche Canyon Subdivision Associations, then the entity giving such notice, acting on behalf of Grantor and all of such Comanche Canyon Subdivision Associations shall have all rights available at law or in equity for enforcement of the Restrictions.

31. The covenants, conditions and restrictions set out herein will remain in full force and effect in the event the Property or any portion thereof is removed from the Comanche Canyon Ranch ETJ PUD.

32. The purposes of the covenants, conditions and restrictions set out herein are as follows:

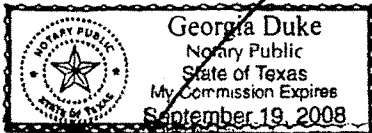
A. To protect the value of and the views from the lots located in the Comanche Canyon Ranch Subdivisions by requiring the Property to be developed and maintained in a harmonious and compatible manner consistent with the above-described lots and subdivisions. As of the Effective Date of this Deed, the Property and all of the Comanche Canyon Ranch Subdivision and all lots therein are part of the Comanche Canyon Ranch ETJ PUD and are intended to be covered by a harmonious and compatible development plan. Grantee shall be deemed to have developed the Property and to be maintaining the Property in such harmonious and compatible manner so long as Grantee complies with the covenants and restrictions set forth in paragraphs 1-31 above and with Exhibits A and B attached hereto.

B. To protect the Preserve from erosion caused by stormwater run-off flowing from developed portions of the Property.

GRANTOR HAS EXECUTED AND DELIVERED THIS SPECIAL WARRANTY DEED AND HAS CONVEYED THE PROPERTY AND GRANTEE HAS RECEIVED AND ACCEPTED THIS SPECIAL WARRANTY DEED AND HAS PURCHASED THE PROPERTY "AS IS", "WHERE IS", AND "WITH ALL FAULTS" AND WITHOUT REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL (EXCEPT FOR THE WARRANTY OF TITLE EXPRESSLY SET FORTH IN THIS DEED).

[Remainder of this page intentionally left blank; signature page follows.]

EXECUTED in multiple counterpart originals as of the date of the acknowledgements set forth below; to be effective however, as of July 31, 2008.



GRANTOR:

Comanche Canyon Development, Inc., a
Texas corporation

By: Robert H. Theriot
Printed Name: Robert H. Theriot
Title: President

**AGREED TO AND ACCEPTED BY
THE CITY OF AUSTIN, TEXAS**

By: Lauraine Rizer
Name: Lauraine Rizer
Title: Manager, Office of Contract and Land
Management

APPROVED AS TO FORM:

ANDREWS KURTH LLP

By: Cassie B. Stinson
Cassie B. Stinson, Partner
Special Counsel to City of Austin

RETURN TO:
NORTH AMERICAN TITLE
823 Congress Ave., Suite 1400
Austin, TX 78701

4031545.1
7835.32448

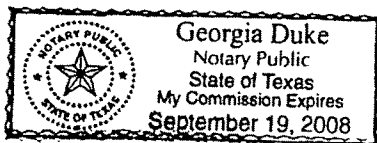
HOU:2805365.10

ACKNOWLEDGEMENTS

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 31st day of July, 2008, by Robert H. Theriot, president of Comanche Canyon Development, Inc., a Texas corporation on behalf of said corporation.

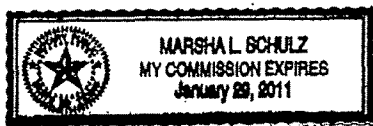


Georgia Duke
Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on July 30th, 2008, by Lauraine Rizer, Manager, Office of Contract and Land Management of the City of Austin, Texas, a Texas home rule municipality, on behalf of said municipality.

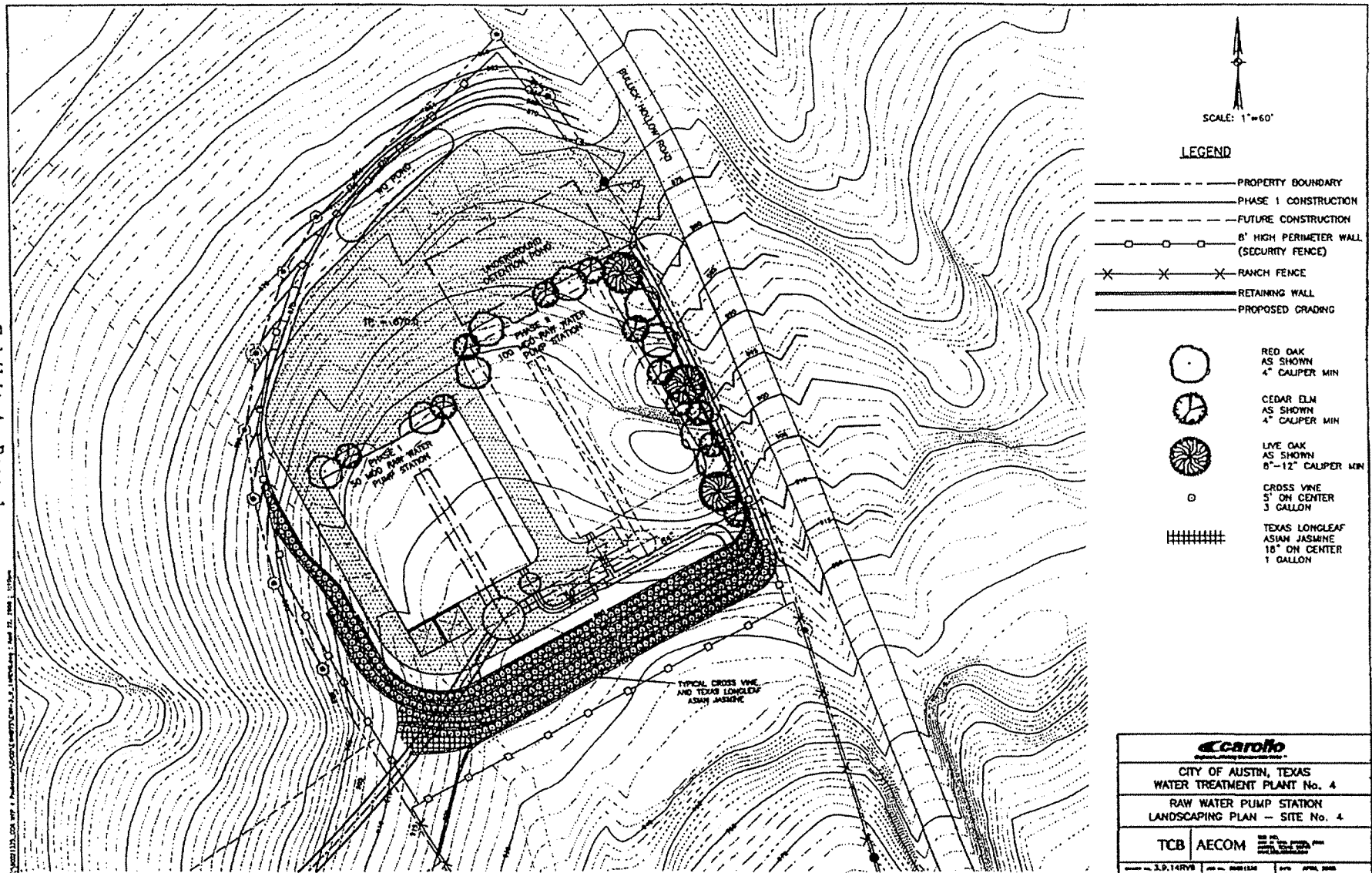


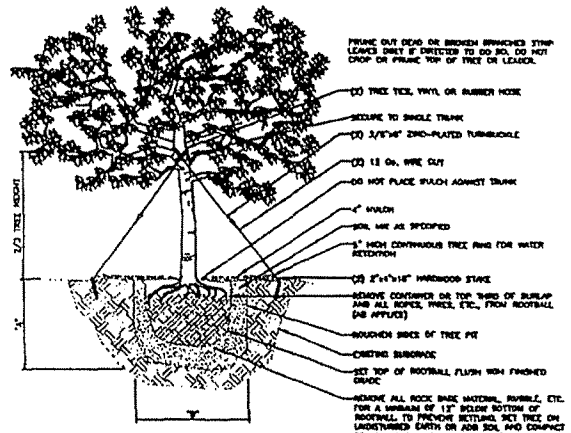
Marsha L. Schulz
Notary Public, State of Texas

AFTER RECORDING, RETURN TO:

City of Austin
Office of Contract and Land Management
Attention: Junie Marie Plummer
P. O. Box 1088
Austin, Texas 78767-8839
File #: 4037.01
TCAD No.: 01-5834-0201
01-5834-0202
01-5836-0101

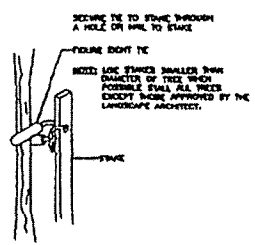
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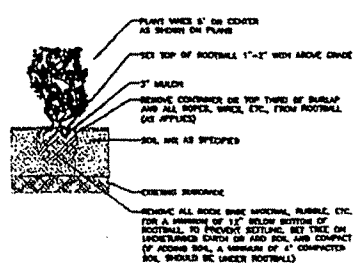


TREE PLANTING - DETAIL No. 1
FOR TREE WITH TRUNK 3" IN CALIPER OR GREATER
N.T.S.

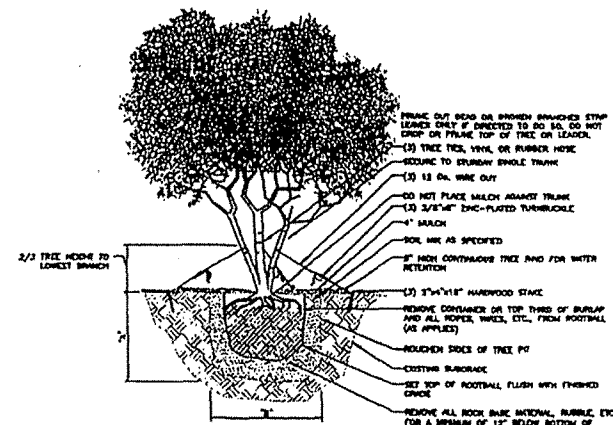
| CONTAINER SIZE | DEPTH "A" | WIDTH "B" |
|----------------|-----------|-----------|
| 1 GALLON | 12" | 18" |
| 2 GALLON | 18" | 24" |
| 10 GALLON | 24" | 36" |
| 15 GALLON | 30" | 42" |
| 18" BOX | 36" | 48" |
| 18" BOX | 36" | 48" |
| 1/2 BARRIL | 36" | 48" |
| 34" BOX | 36" | 48" |



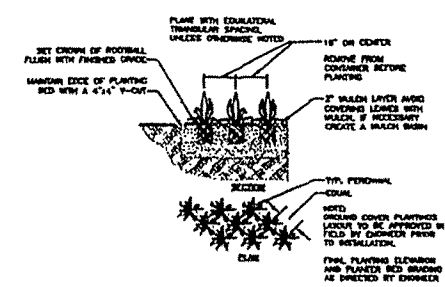
TREE TIE - DETAIL No. 3
N.T.S.



VINE BED PLANTING - DETAIL No. 4
N.T.S.



TREE PLANTING - DETAIL No. 2
FOR MULTI-TRUNK TREES
N.T.S.



GROUND COVER PLANTING DETAIL No. 5
N.T.S.

CITY OF AUSTIN, TEXAS
WATER TREATMENT PLANT No. 4
RAW WATER PUMP STATION
LANDSCAPING DETAILS

TCB AECOM

DESIGNED BY J.B. TAYLOR
DRAWN BY J.B. TAYLOR
CHECKED BY J.B. TAYLOR
DATE: APRIL 2004

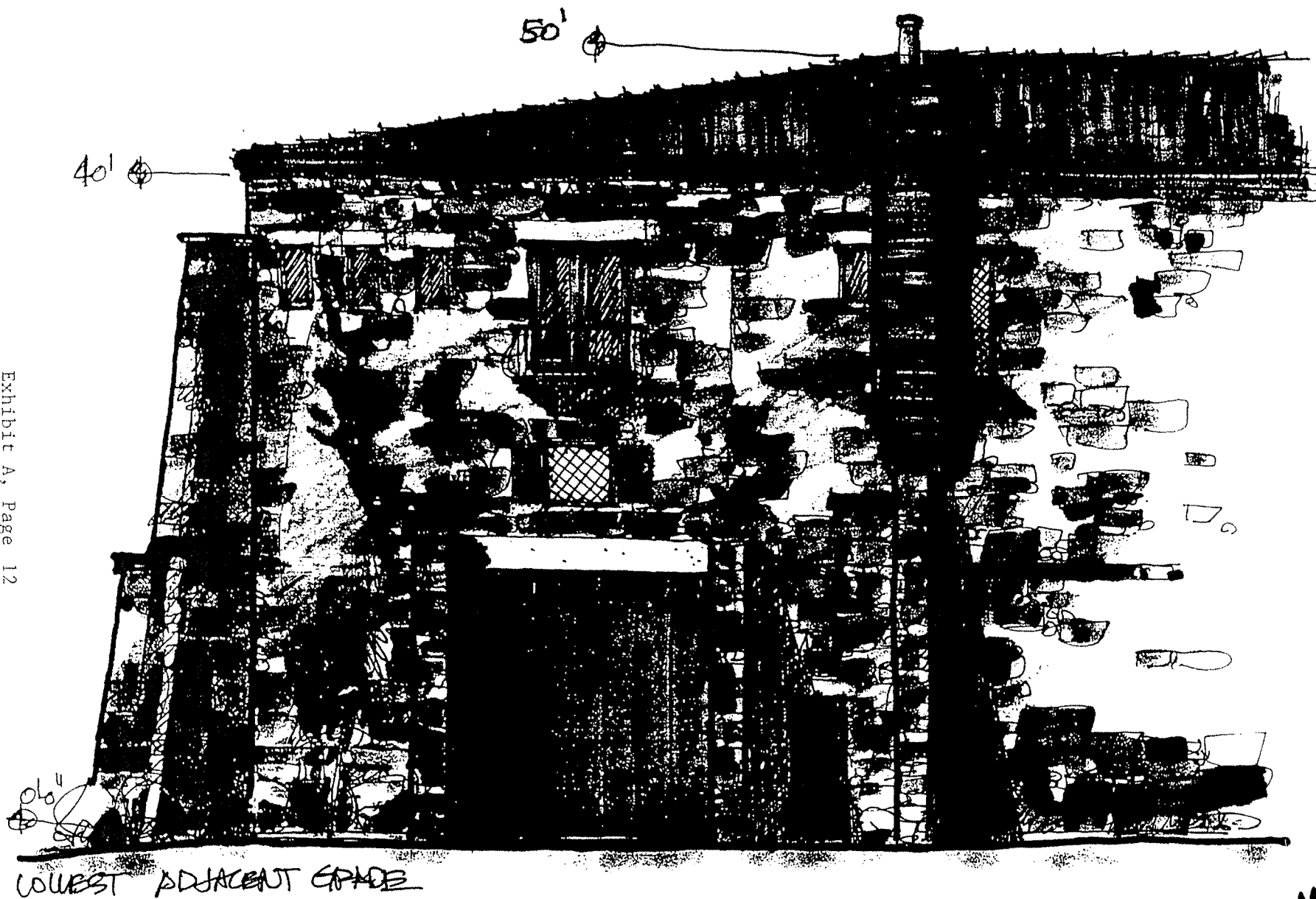


EXHIBIT "B"
PAGE 1 OF 1

Exhibit C

PERMITTED EXCEPTIONS

1. The following Restrictive Covenants of record itemized below:
 - a. Volume 13034, Page 27, Real Property Records of Travis County, Texas.
 - b. Document No. 2004026540, Official Public Records of Travis County, Texas.
 - c. Document No. 2004053529, Official Public Records of Travis County, Texas.
 - d. Document No. 2004054128, Official Public Records of Travis County, Texas.
 - e. Document No. 2005107955, Official Public Records of Travis County, Texas.
 - f. Document No. 2005109751, Official Public Records of Travis County, Texas.
 - g. Document No. 2005110584, Official Public Records of Travis County, Texas.
2. Overhead electric line and utility poles on and across the Property and fences lying off the Property lines as reflected on survey dated 4/11/2008 prepared by Gregorio Lopez, Jr., RPLS No. 5272.
3. Easement for Underground Water Tunnel granted to the City of Austin, as recorded in Volume 9678, Page 483, Real Property Records of Travis County, Texas.
4. 15' Wastewater Line Easement granted to Travis County Water Control & Improvement District No. 17, as recorded under County Clerk's Document No. 2004234548, Official Public Records of Travis County, Texas.
5. Critical Environmental Feature Buffer as shown on the subdivision plat recorded under Document No. 200600184, Official Public Records of Travis County, Texas.
6. Easement rights as set out on the subdivision plat recorded under Document No. 200600184, Official Public Records of Travis County, Texas.
7. All of the oil, gas and other minerals, together with all rights relating thereto, express or implied, as conveyed and/or reserved in documents recorded in Volume 3430, Page 1641, Volume 4572, Page 1205, Volume 5337, Page 240, and Volume 7185, Page 2295, Deed Records of Travis County, Texas.
8. Covenants providing for assessments as set out in instrument recorded under document No. 2005107955, Official Public Records of Travis County, Texas.
9. The rights of Travis County Water Control & Improvement District No. 17 to levy taxes and issue bonds.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2008 Jul 31 03:33 PM 2008129833

DAVID \$68.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS



MACIAS & ASSOCIATES, L.P.
LAND SURVEYORS

EXHIBIT "A"

DHD Ventures, LTD.
To
The City of Austin
December 30, 2007

LEGAL DESCRIPTION

OF A 20.357 ACRE (886,753 SQUARE FOOT) TRACT OF LAND OUT OF THE S.T. BULLOCK SURVEY NO. 76, ABSTRACT NO. 2624 AND THE RIORDAN SURVEY NO. 76, ABSTRACT NO. 2618 IN TRAVIS COUNTY, TEXAS. SAID 20.357 ACRE TRACT ALSO BEING OUT OF THE REMAINING PORTION OF THE 312.76 ACRE TRACT CONVEYED TO ROBERT H. THERIOT BY DEED DATED JANUARY 9, 1998 BY INSTRUMENT OF RECORD IN VOLUME 13294, PAGE 1317 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS. AS SHOWN ON THE ACCOMPANYING SKETCH AND DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

POINT OF BEGINNING, at a ½" iron rod found on the south line of a 34.85 acre tract of land conveyed to MCPMT, LTD. by instrument of record in volume 4286, page 749, deed records of Travis County Texas, the northwest corner of a 42.00 acre tract conveyed to John E. and John M. Joseph, Trustees, by instrument of record in volume 11175, page 150 in the real property records of Travis County, Texas, an exterior corner of the remaining Theriot 312.76 acre tract, the northeast corner of a Cellular Antenna Site Lease and a corner of this tract;

THENCE, S27°03'26"W 465.17 feet with an east line of this tract and a west line of the 42.00 acre tract to a ½" iron road with a "McAngus Surveying" cap;

THENCE, traversing through the 312.76 acre tract the following twenty three (23) courses;

1. N84°42'32"W, 223.30 feet to a ½" iron road with a "McAngus Surveying" cap found;
2. N74°35'48"W, 195.30 feet to a magnetic nail found;
3. N41°52'08"W, 140.24 feet to a ½" iron road with a "McAngus Surveying" cap found;
4. N01°32'12"E, 138.23 feet to a ½" iron road with a "McAngus Surveying" cap found;
5. N45°46'37"W, 121.84 feet to a cotton spindle found;
6. N75°44'45"W, 84.61 feet to a ½" iron road with a "Macias" plastic cap set;
7. N84°38'28"W, 21.74 feet to a magnetic nail found;
8. N23°30'46"W, 320.56 feet to a ½" iron road with a "McAngus Surveying" cap found;
9. N24°20'57"E, 307.36 feet to a ½" iron road with a "McAngus Surveying" cap found;

10. N04°34'51"E, 147.37 feet to a ½" iron road with a "McAngus Surveying" cap found;
 11. N30°19'35"W, 173.45 feet to a cotton spindle found;
 12. N17°11'21"E, 109.07 feet to cotton spindle found;
 13. N59°12'38"E, 99.88 feet to a ½" iron road with a "McAngus Surveying" cap found;
 14. N84°11'23"E, 85.38 feet to a ½" iron road with a "McAngus Surveying" cap found;
 15. N26°32'09"E, 145.69 feet to a ½" iron road with a "McAngus Surveying" cap found;
 16. N62°32'21"E, 63.66 feet to a ½" iron road with a "McAngus Surveying" cap found;
 17. N18°20'44"E, 105.92 feet to a ½" iron road with a "McAngus Surveying" cap found;
 18. N72°31'09"E, 65.93 feet to a cotton spindle found;
 19. N31°45'27"E, 134.99 feet to a ½" iron road with a "Macias" plastic cap set;
 20. N81°21'46"E, 130.92 feet to a ½" iron road with a "McAngus Surveying" cap found;
 21. N35°19'41"E, 360.36 feet to a ½" iron road with a "Macias" plastic cap set;
 22. N24°41'57"W, 107.79 feet to a ½" iron road with a "McAngus Surveying" cap found;
 23. N20°38'53"E, 56.50 feet to a ½" iron road with a "McAngus Surveying" cap found on an east line of this tract and the west line of said 34.85 acre tract;
- THENCE**, with the east line of this tract and the west line of said 34.85 acre tract, N27°12'10"E, 266.14 feet to a ½" iron rod found for a corner;
- THENCE**, S61°46'47"E, 337.29 feet to the POINT OF BEGINNING and containing 20.357 Acres (886,753 SQUARE FEET) of land.

BEARING BASIS NOTE

All bearings described herein are based upon the Texas State Plane Coordinates System, NAD 83 (1986) South Central Zone.

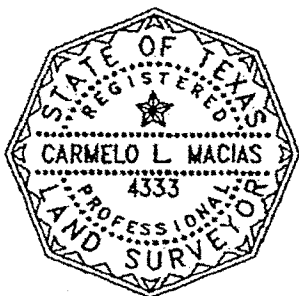
THE STATE OF TEXAS §

COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

That I, Carmelo Lettore Macias, a Registered Professional Land Surveyor, do hereby state that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this 30th day of December, 2007, A.D.



Macias & Associates, L.P.
5410 South 1st Street
Austin, Texas 78745
512-442-7875

Carmelo L. Macias
Carmelo L. Macias
Registered Professional Land Surveyor
No. 4333 – State of Texas

REFERENCES

Austin Grid No. M 33
TCAD PARCEL ID NO. 01-51371-0101
Volume 13294, Page 1317

MACIAS & ASSOCIATES, L.P., PROJECT NO. 425-01-07

J: jobs/ctw/20AcreTract



DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE PERMIT

3-201
(1/87)

1. PERMITTEE

Comanche Canyon Development, Inc.
6550 Comanche Trail
Austin, Texas 78732
Phone: 512/266-7810

2. AUTHORITY-STATUTES
16 USC 1539(a)(1)(B)
REGULATIONS (Attached)
50 CFR §§ 13 & 17

3. NUMBER

TE-004683

4. RENEWABLE

[x] YES
[] NO

5. MAY COPY

[x] YES
[] NO

6. EFFECTIVE
5/22/2006

7. EXPIRES
7/17/2030

8. NAME AND TITLE OF PRINCIPAL OFFICER (if #1 is a business)
Mr. Robert H. Theriot, President

9. TYPE OF PERMIT
Endangered Species - Incidental Take

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED
Approximately 446-acres Comanche Canyon Development, Inc., in Travis County, Texas

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2, ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORDANCE WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW. THIS PERMIT DOES NOT WAIVE THE OBLIGATION TO ABIDE BY OTHER FOREIGN, STATE, LOCAL OR FEDERAL LAW IN CARRYING OUT AUTHORIZED ACTIVITIES.
- C. VALID FOR USE BY PERMITTEES NAMED ABOVE.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE UNDERSTANDS AND AGREES TO ABIDE BY THE "GENERAL CONDITIONS FOR NATIVE ENDANGERED AND THREATENED WILDLIFE SPECIES PERMITS" (copy enclosed).

12. REPORTING REQUIREMENTS Written annual reports of the years activities, including presence/absence surveys for the golden-cheeked warbler will be submitted by October 1 of each year.

ISSUED BY:

Susan Jacobson

TITLE

Assistant Regional Director

DATE

5/12/06

Comanche Canyon Ranch, Inc.

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- E. The Permittee is authorized for take of golden-cheeked warbler (*Dendroica chrysoparia*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Kretschmarr Cave mold beetle (*Texamauropus reddelli*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Tooth Cave spider (*Neoleptoneta myopica*), and Tooth Cave ground beetle (*Rhadine persephone*) on the 446-acre property, incidental to activities necessary for the residential and commercial construction described in the Permittee's application.
- F. The Permittee or his assignee will only clear vegetation in, or within 300 feet of, golden-cheeked warbler habitat during the time of the year when golden-cheeked warblers are not breeding (August 1 through February 28) unless breeding season surveys performed by a U.S. Fish and Wildlife Service (Service)-permitted biologist (according to Service guidelines) indicate that no golden-cheeked warblers are present within 300 feet of the desired activity. Construction activities in or within 300 feet of golden-cheeked warbler habitat may be initiated during the time of year when golden-cheeked warblers are present so long as such construction follows permitted clearing in a prompt and expeditious manner indicating a continuous activity.
- G. The Permittee or his assignee will minimize clearing for construction of buildings, streets, and other areas of impervious cover to the maximum extent practicable.
- H. The Permittee or his assignee shall be consistent with the current practices recommended by the Texas Forest Service to prevent the spread of oak wilt during clearing for construction within the proposed development areas.
- I. The Permittee or his assignee will comply with the label guidelines for application of herbicides and pesticides.
- J. The Permittee or his assignee will prohibit the use of deer feeders or bird seed feeders in residential yards and in preserve areas through deed restrictions.
- K. The Permittee or his assignee will prohibit free-roaming cats and dogs through deed restriction.
- L. Excavation of the property will not require a site geologist to be present, but the procedures contained in Conditions M through O will still be followed if any caves, karst features, or subterranean voids are encountered.
- M. If any caves, karst features, or subterranean voids are encountered during construction, then construction work within 500 feet of the encountered voids will halt until project environmental consultants have completed necessary evaluations. The Service will be notified immediately. The Permittee will have a qualified geologist or geohydrologist familiar with karst invertebrates respond immediately to evaluate the void geologically to determine if it has the potential to contain endangered karst invertebrate habitat. If the potential for habitat is evident, the Permittee will have the feature examined by a qualified karst invertebrate biologist, approved by the Service, for the presence of the listed karst invertebrates. Three biological collection surveys will be conducted on three separate days over a period not greater than one week to determine the presence or absence of the listed invertebrates or other species of concern. Between surveys, voids should be covered to prevent drying, but still allow nutrient input. A report of the surveys,

Comanche Canyon Ranch, Inc.

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including climate data inside and outside of the cave, will be submitted to the Service immediately.

- N. If no endangered, threatened or species of concern are determined to be present in an encountered feature, environmental consultants will issue specific instructions in accordance with standard Texas Natural Resource Conservation Commission accepted practices, as applicable, for any particular void. If sealed, voids will not allow any impacts or contamination into the karst ecosystem. The Service will be notified of methods used for dealing with the void. Construction activity will then resume with the carrying out of those specific instructions. The Service will be notified of findings prior to resuming construction activities.
- O. If endangered, threatened, or species of concern are determined to be present within an encountered feature, the Permittee will consult with the Service to determine on-site avoidance measures and the Permittee will implement said measures. Upon completion or implementation of the avoidance procedures (following inspection and approval by the environmental consultants), the work may resume.
- P. Approximately 336 acres will be preserved in perpetuity by being donated to Travis County or another conservation entity approved by the Service. The operation and maintenance of the preserve will be turned over to Travis County or other conservation entity approved by Service through a conservation easement to be managed according to Balcones Canyonlands Preserve land management plans.
- Q. After considering carefully the direct and indirect impacts of the development, construction, and occupation of Comanche Canyon Development, including associated roads and utilities, and taking into account the substantial avoidance of habitat areas on the property and the areas that the Permittee will maintain as preserve, the Service has concluded that the lands considered for preserve represent mitigation of impacts to the golden-cheeked warbler in excess of that required to adequately mitigate for the impacts of the development project. Such excess mitigation is in the amount of 123 acres of golden-cheeked warbler habitat. The Permittee (subject to Service approval) will be entitled to "bank" this excess mitigation in perpetuity for use in connection with possible future revisions to project envelopes or other projects pursued by the Permittee, or for transfer and sale to third-parties needing to provide mitigation for projects within the same recovery unit for the golden-cheeked warbler. The Permittee and the Service will establish a record-keeping system for tracking ownership and utilization of the excess mitigation credits. Each of the excess mitigation credits will be construed by the Service as providing the same mitigation value for similar habitat type (i.e., zone 1 or 2) as a one-acre golden-cheeked warbler Balcones Canyonlands Preserve Participation Certificate or one acre of golden-cheeked warbler habitat of long-term preserve quality.
- R. The Permittee will provide funding for the operation and maintenance of the approximately 336 acres as a preserve for golden-cheeked warbler. The amount of funding will be agreed upon by the Permittee and Travis County or other conservation entity prior to issuance of the Section 10(a)(1)(B) permit.
- S. The Permittee or his assignee, to the maximum extent practicable, will allow vegetation within

Comanche Canyon Ranch, Inc.

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preserve areas of Comanche Canyon Development that currently do not support golden-cheeked warbler habitat to be allowed to succeed to a wooded state in order to increase the amount of potentially suitable golden-cheeked warbler habitat on site.

- T. The Permittee or his assignee will phase off cattle or other domestic livestock from the property over a period of four years. No livestock of any kind will be allowed in the preserve areas after that time.
- U. Activities implementing the conservation measures will be reported in an annual report to the Service due on the anniversary of permit issuance.
- V. Compliance monitoring surveys of golden-cheeked warbler territories will be conducted and mapped for the Comanche Canyon Development Tract every other year from the construction phase through the second year following attainment of 95% project buildout to assess how development of the property affects the local warbler population.
- W. Any unforeseen circumstances or preserve conditions determined to be detrimental to golden-cheeked warblers will trigger the need to consult with the Service for advice on adaptive management. The preserve manager must report immediately, any site conditions or disturbances found of which it does not possess a ways or means to readily correct.
- X. If vandalism of preserves is detected, the Service as well as local law enforcement authorities, will be immediately notified. Any effects of vandalism will be documented and then corrected, as appropriate, as quickly as possible.
- Y. Storm damage to preserves will be assessed and documented as soon as possible. The Service will be notified and corrective measures implemented, as appropriate.
- Z. The Permittee shall immediately notify the Fire Department and the Service of any fire, wild or deliberate. Following extinguishment and assessment of any impacts corrective actions will be implemented, as appropriate.
- AA. In the case of spills of hazardous materials on roadways or lawns, the Permittee shall immediately notify the Fire Department who has spill response capability and plans. The Permittee shall immediately notify the Service and begin assessment of any damages.
- BB. Adjacent landowners surrounding Comanche Canyon Development may conduct activities deemed potentially damaging to the preserve areas. In such event, the Service would be immediately notified and corrective measures implemented by the Permittee, as appropriate.
- CC. There are always possibilities for unforeseen circumstances to occur. In these cases, such circumstances will be assessed for potential impacts and corrective measures implemented by the Permittee, as appropriate, in consultation with the Service.
- DD. If Travis County accepts the conservation easement for the preserve, then they will manage the land according to the Balcones Canyonlands Preserve regional permit (PRT #788841) and

Comanche Canyon Ranch, Inc.

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approved land management plans.

- EE. Written annual reports of the years activities, including presence/absence surveys for the golden-cheeked warbler as described in the implementing agreement and status of clearing and construction, will be submitted by October 1 of each year to the U.S. Fish and Wildlife Service Office 10711 Burnet, Suite 200, Austin, Texas 78758; and to the U.S. Fish and Wildlife Service, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103.
- FF. Upon locating a dead, injured, or sick golden-cheeked warbler, or any other endangered or threatened species, the Permittee is required to contact the Service's Law Enforcement Office, San Antonio, Texas, (210) 681-8419, for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, the Permittee and its contractor/subcontractor have the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.
- GG. Terms and conditions of this permit shall be binding on and for the benefit of the Permittee and their respective successors and assigns. If the permit requires an amendment because of change of ownership, the Service will process that amendment without the requirement of the Permittee preparing any new documents or providing any mitigation over and above that required in the original permit. The construction activities proposed or in progress under an original permit may not be interrupted provided the required special conditions of an issued permit are being followed.
- HH. If during the tenure of this permit the project design and/or the extent of the habitat impact described in the habitat conservation plan is altered, such that there may be an increase in the anticipated take of the golden-cheeked warbler, the Permittee is required to contact the Service and obtain authorization and/or amendment of the permit before commencing any construction or other activities that might result in take beyond that described in the Environmental Assessment/Habitat Conservation Plan (EA/HCP).

If a conservation entity other than Travis County manages the preserve, then the following adaptive management and monitoring measures will be implemented:

- II. A representative of the management entity will attend meetings of the Balcones Canyonlands Preserve Land Management Committee.
- JJ. The preserve areas of the Comanche Canyon Ranch Tract will be monitored every other year by the conservation entity for indications that the health of the golden-cheeked warblers (i.e., population) or their habitat is beginning to be negatively impacted by other animals or other factors. Annual golden-cheeked warbler territorial surveys following Service approved protocol will be conducted in the preserve area and results reported to the Service. The preserve area should be monitored for the occurrence of these factors, such as an increase in the number of white-tailed deer on the preserve, which could directly impact the golden-cheeked warbler or its

Comanche Canyon Ranch, Inc.

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habitat. Aspects of the habitat that should be monitored may include, but are not limited to, a decline in oak seedling recruitment, indications of increased browsing pressure, a prevalence of fire ant mounds, and the threat of wildfire. Additionally, the tract will be monitored for a relatively high number of potential mammalian predators of golden-cheeked warblers, indications of excessive cowbird parasitism, and for indirect or direct human disturbances.

- KK. Deer and feral hogs often occur in greater density adjacent to suburban areas than in undeveloped areas due to greater availability of food and lower predation rates. High densities of deer and feral hogs may have a long-term adverse affect on the abundance and distribution of deciduous tree species in the Comanche Canyon Development preserve areas by increasing browsing pressure on seedlings and saplings. The subsequent decrease in the deciduous tree component of the forested areas would lead to an overall decrease in the habitat value of the area for golden-cheeked warblers. Therefore, if the effects of excessive browsing pressure or a lack of oak seedling recruitment are noticed, the conservation entity will coordinate with the Service to determine appropriate techniques to control browsing. Such techniques may include fencing, hunting, and/or other deer number reduction programs. Through deed restriction, deer feeders in residential yards and in preserve areas are prohibited because supplemental feeding could contribute to an increased deer population. The preserve area will be available for deer censusing conducted by the state or other agencies interested in assessing deer and feral hog population levels.
- LL. Some problem mammals which predate songbird eggs and young are domestic and feral cats, raccoons, opossums, and skunks. If home/business owners begin to notice an increase in the number of human interactions with raccoons, skunks, or opossums, or other indicative signs, such as an increase in the amount of scat observed, a live-trapping program to reduce the number of mammalian predators should be implemented. Such a program should only be implemented after consultation with the Service.
- MM. Imported red fire ants have been recently shown to prey upon the chicks of arboreal nesting birds. If fire ant mounds are encountered during routine monitoring activities, then fire ants may be controlled with an Integrated Pest Management program using approved chemicals and bait formulations. Fire ant control should be designed to minimize impact on native ants and other flora and fauna.
- NN. Brown-headed cowbirds, an open-field species, are well known for parasitism of songbird nests. If the conservation entity determines that cowbird trapping is necessary on the Comanche Canyon Development tract, the Permittee will cooperate with the Service and the conservation entity in the placement and operation of cowbird traps.
- OO. Development of the Comanche Canyon Development tract should not appreciably increase the potential for occurrence of a catastrophic wildfire within the proposed preserve areas. If the presence of fire breaks on the Comanche Canyon Development tract is determined necessary by the Service and the Permittee, such fire breaks would normally be created outside of preserve areas to avoid destruction of golden-cheeked warbler habitat. However, it is possible that a prolonged drought could occur that would greatly increase the potential for a catastrophic wildfire event. In such a case, the security provided by the creation of fire breaks within preserve areas

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may outweigh the loss of a small amount of golden-cheeked warbler habitat. The Permittee will seek Service approval of any fire breaks to be created within preserve areas, prior to construction. In the event of a drought, signs will be placed at prominent locations around the preserve warning of the fire hazard conditions.

- PP. Any activities occurring within preserve areas outside of the golden-cheeked warbler breeding season with potential to adversely affect golden-cheeked warbler habitat (e.g. trails) will be coordinated with the Service. Motorized vehicles will be prohibited from preserve areas at all times, unless otherwise allowed by the Service to facilitate operation and maintenance of preserve areas. Mountain biking and horseback riding in the preserve area will be prohibited.
- QQ. Clearing for construction of buildings, streets, and other areas of impervious cover will be minimized to the maximum extent practicable. Areas outside of platted lots that are disturbed during construction, but are not occupied by impervious surfaces, will be replanted with native oaks and other native vegetation.

-----End of Permit Terms and Conditions Permit # TE-004683-2-----

**AGREEMENT REGARDING MINOR AMENDMENT TO
US FISH AND WILDLIFE 10(a)(1)(B) PERMIT**

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS AGREEMENT ("**Agreement**") is made by and between Comanche Canyon Development, Inc., a Texas corporation, 6535 Comanche Trail, Austin, Texas 78732 ("**CCD, Inc.**" or "**Current Permittee**"), and the City of Austin, Texas, a home-rule municipal corporation situated in the Counties of Travis, Williamson and Hays, State of Texas, PO Box 1088, Austin, Texas 78767-8839, Attention: Manager, Real Estate Services Division, Office of Contract and Land Management ("**City**"), collectively referred to as the "**Parties**", or singularly as a "**Party**".

I.

Recitals

1.01 City owns that certain 20.357 acre tract of land more particularly described in Exhibit "**A**" which is attached hereto and made a part hereof for all purposes (the "**Property**").

1.02 The Property is subject to the USFW Service Endangered Species Act Sec. 10(a)(1)(B) Permit Number TE 004683-2, effective May 22, 2006 and expiring July 17, 2030 (the "**10a Permit**") issued to Comanche Canyon Ranch, Inc. (the "**Original Permittee**") and assigned and assumed by CCD, Inc., the Current Permittee.

1.03 The 10a Permit authorizes the Property to be utilized for commercial and/or residential purposes.

1.04 The City desires to utilize the Property for a water treatment plant facility which is an industrial use (the "**Facility**").

1.05 The City has requested that the Current Permittee obtain a minor amendment to the 10a Permit which will authorize the City's utilization of the Property for the Facility (the "**Minor Amendment**") and the Current Permittee has agreed to obtain the Minor Amendment.

1.06 The City and the Current Permittee have also agreed to enter into a Partial Assignment and Assumption Agreement pursuant to which City will have all rights, benefits and obligations of the 10a Permit to the extent such rights, benefits and obligations appertain or in any way relate to the Property (the "**Assignment and Assumption Agreement**").

II.

Agreement

2.01 Current Permittee agrees to apply to the US Fish and Wildlife Service (the "**USFW Service**") for the Minor Amendment which will provide that the construction,

operation, maintenance, and repair of the Facility on the Property. Current Permittee's costs incurred incident to the Minor Amendment which shall not exceed \$10,000.00 will be paid by City within fifteen (15) days after the Minor Amendment has been obtained or within fifteen (15) days after the request for the Minor Amendment has been denied.

2.02 City will submit a proposed draft of the request for the Minor Amendment and the Assignment and Assumption Agreement to Current Permittee; Current Permittee will have the right to submit revisions to City. Current Permittee will submit the proposed drafts of the Minor Amendment request and the Assignment and Assumption Agreement with Current Permittee's revisions to the City for review and approval. City will have the right to submit additional revisions to Current Permittee; Current Permittee will then resubmit the revised Minor Amendment request and the Assignment and Assumption Agreement to City for review and approval, until such time the Minor Amendment request and the Assignment and Assumption Agreement are approved in writing by City and Current Permittee. Current Permittee will submit the Minor Amendment request to the USFW Service within five (5) calendar days after City and Current Permittee have approved same. If the USFW Service requires changes in the proposed Minor Amendment, City and Current Permittee shall have the right to review and mutually approve such changes before Current Permittee requests the final issuance thereof.

2.03 City will submit to Current Permittee a draft of a technical memorandum in support of the Minor Amendment request to Current Permittee (the "**Technical Memorandum**"). Current Permittee will have the right to submit revisions to the proposed draft of the Technical Memorandum to City. When City and Current Permittee have approved the Technical Memorandum in writing, Current Permittee will submit the Technical Memorandum to the USFW Service with a copy to City.

2.04 Upon issuance of the Minor Amendment (the "**Amended 10a Permit**"), Current Permittee will provide a true and correct copy to City within three (3) days of receipt by Current Permittee.

III.

Consideration

3.01 The consideration to be paid by City to Current Permittee upon the execution of this Agreement is \$2,500.00 and additional consideration being the City's promise set forth in paragraph 2.01 of this Agreement to pay Current Permittee's expenses (not to exceed \$10,000.00) incurred by Current Permittee in connection with obtaining the Minor Amendment.

[Signature page follows.]

EXECUTED in multiple counterpart originals effective as of the later date set forth below.

CURRENT PERMITTEE:

Comanche Canyon Development, Inc., a
Texas corporation

Date: _____

By: _____
Robert H. Theriot, its President

CITY:

The City of Austin, a Texas home rule
municipal corporation

Date: 07-02-08

By: Lauraine Rizer
Lauraine Rizer, Manager
Office of Contract and
Land Management

Approved As To Form:

ANDREWS KURTH, LLP

By: Cassie B. Johnson, Partner
Special Counsel to City of Austin

EXECUTED in multiple counterpart originals effective as of the later date set forth below.

CURRENT PERMITTEE:

Comanche Canyon Development, Inc.,
a Texas corporation

Date:

July 2, 2008

By:

Robert H. Theriot
Robert H. Theriot, its President

CITY:

The City of Austin,
a Texas home rule municipal corporation

Date:

By:

Lauraine Rizer, Manager
Office of Contract and
Land Management

Approved As To Form:

ANDREWS KURTH, LLP

By:

Special Counsel to City of Austin



MACIAS & ASSOCIATES, L.P.
LAND SURVEYORS

EXHIBIT "A"

DHD Ventures, LTD.
To
The City of Austin
December 30, 2007

LEGAL DESCRIPTION

OF A 20.357 ACRE (886,753 SQUARE FOOT) TRACT OF LAND OUT OF THE S.T. BULLOCK SURVEY NO. 76, ABSTRACT NO. 2624 AND THE RIORDAN SURVEY NO. 76, ABSTRACT NO. 2618 IN TRAVIS COUNTY, TEXAS. SAID 20.357 ACRE TRACT ALSO BEING OUT OF THE REMAINING PORTION OF THE 312.76 ACRE TRACT CONVEYED TO ROBERT H. THERIOT BY DEED DATED JANUARY 9, 1998 BY INSTRUMENT OF RECORD IN VOLUME 13294, PAGE 1317 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS. AS SHOWN ON THE ACCOMPANYING SKETCH AND DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

POINT OF BEGINNING, at a 1/2" iron rod found on the south line of a 34.85 acre tract of land conveyed to MCPMT, LTD. by instrument of record in volume 4286, page 749, dead records of Travis County Texas, the northwest corner of a 42.00 acre tract conveyed to John E. and John M. Joseph, Trustees, by instrument of record in volume 11175, page 150 in the real property records of Travis County, Texas, an exterior corner of the remaining Theriot 312.76 acre tract, the northeast corner of a Cellular Antenna Site Lease and a corner of this tract;

THENCE, S27°03'26"W 465.17 feet with an east line of this tract and a west line of the 42.00 acre tract to a 1/2" iron rod with a "McAngus Surveying" cap;

THENCE, traversing through the 312.76 acre tract the following twenty three (23) courses;

1. N84°42'32"W, 223.30 feet to a 1/2" iron rod with a "McAngus Surveying" cap found;
2. N74°35'48"W, 195.30 feet to a magnetic nail found;
3. N41°52'08"W, 140.24 feet to a 1/2" iron rod with a "McAngus Surveying" cap found;
4. N01°32'12"E, 138.23 feet to a 1/2" iron rod with a "McAngus Surveying" cap found;
5. N45°46'37"W, 121.84 feet to a cotton spindle found;
6. N75°44'45"W, 84.61 feet to a 1/2" iron rod with a "Macias" plastic cap set;
7. N84°38'28"W, 21.74 feet to a magnetic nail found;
8. N23°30'46"W, 320.56 feet to a 1/2" iron rod with a "McAngus Surveying" cap found;
9. N24°20'57"E, 307.36 feet to a 1/2" iron rod with a "McAngus Surveying" cap found;

10. N04°34'51"E, 147.37 feet to a ½" iron road with a "McAngus Surveying" cap found;
 11. N30°19'35"W, 173.45 feet to a cotton spindle found;
 12. N17°11'21"E, 109.07 feet to cotton spindle found;
 13. N59°12'38"E, 99.88 feet to a ½" iron road with a "McAngus Surveying" cap found;
 14. N84°11'23"E, 85.38 feet to a ½" iron road with a "McAngus Surveying" cap found;
 15. N26°32'09"E, 145.69 feet to a ½" iron road with a "McAngus Surveying" cap found;
 16. N62°32'21"E, 63.66 feet to a ½" iron road with a "McAngus Surveying" cap found;
 17. N18°20'44"E, 105.92 feet to a ½" iron road with a "McAngus Surveying" cap found;
 18. N72°31'09"E, 65.93 feet to a cotton spindle found;
 19. N31°45'27"E, 134.99 feet to a ½" iron road with a "Macias" plastic cap set;
 20. N81°21'46"E, 130.92 feet to a ½" iron road with a "McAngus Surveying" cap found;
 21. N35°19'41"E, 360.36 feet to a ½" iron road with a "Macias" plastic cap set;
 22. N24°41'57"W, 107.79 feet to a ½" iron road with a "McAngus Surveying" cap found;
 23. N20°38'53"E, 56.50 feet to a ½" iron road with a "McAngus Surveying" cap found on an east line of this tract and the west line of said 34.85 acre tract;
- THENCE, with the east line of this tract and the west line of said 34.85 acre tract, N27°12'10"E, 266.14 feet to a ½" iron rod found for a corner;
- THENCE, S61°46'47"E, 337.29 feet to the POINT OF BEGINNING and containing 20.357 Acres (886,753 SQUARE FEET) of land.

BEARING BASIS NOTE

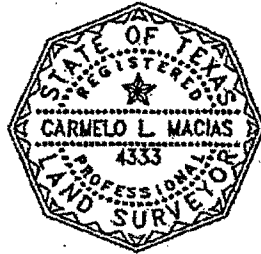
All bearings described herein are based upon the Texas State Plane Coordinates System, NAD 83 (1986) South Central Zone.

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

That I, Carmelo Letere Macias, a Registered Professional Land Surveyor, do hereby state that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this 30th day of December, 2007, A.D.



Macias & Associates, L.P.
5410 South 1st Street
Austin, Texas 78745
512-442-7875

Carmelo L. Macias
Carmelo L. Macias
Registered Professional Land Surveyor
No. 4333 - State of Texas

REFERENCES

Austin Grid No. M 33
TCAD PARCEL ID NO. 01-51371-0101
Volume 13294, Page 1317

MACIAS & ASSOCIATES, L.P., PROJECT NO. 425-01-07



I: jobs/crw/20AcreTract

ESCROW AGREEMENT


To: North American Title Company
Attention: Georgia Duke
GF No.: 14663-07-00426
Property: Area 3 Pump Station Site, more particularly described in **Exhibit "A"** attached hereto
Principals: Seller: Comanche Canyon Development, Inc., a Texas corporation
Buyer: City of Austin, Texas
Purchase and Sale Agreement dated July 8, 2008 ("**Purchase Agreement**")


The undersigned Seller and Buyer, as Principals, hereby appoint NORTH AMERICAN TITLE COMPANY ("**Escrow Agent**"), as Escrow Agent on behalf of Principals, and Escrow Agent hereby accepts such appointment and agrees, to comply with the escrow instructions of the Principals as set forth herein.

Principals have deposited with Escrow Agent, and direct Escrow Agent to hold in escrow the sum of:

 A: ~~\$20,000~~ ^{\$0.00} pursuant to Sec. 1.03(b) of the Purchase Agreement (relating to Concurrence Request),
 B: ~~\$30,000~~ ^{\$0.00} pursuant to Sec. 1.03(b) of the Purchase Agreement (relating to Request for Amendment), and
C: \$150,000 pursuant to Sec. 1.03(h) of the Purchase Agreement,

(together with interest thereon, the "**Escrow Funds**") for the purposes set forth on **Exhibit "B"** and to be disbursed in the manner and at the time(s) set forth on **Exhibit "B"**.

The Escrow Funds shall be held in an interest-bearing account with a national bank and invested in US Treasuries and other similar government securities, which account is to be styled as follows: "COMANCHE CANYON DEVELOPMENT, INC./ NORTH AMERICAN TITLE COMPANY AS ESCROW AGENT" and if permitted, "Re ESCROW RELATING TO AMENDMENT OF 10A PERMIT", by Escrow Agent under the above-referenced GF No.. Interest on said account is to accrue to the benefit of Seller, whose taxpayer I.D. number (TIN) is 

 The Principals agree that neither Escrow Agent nor any employee of Escrow Agent has given advice with regard to the financial institution or type of investment set out above. It is further agreed that Escrow Agent shall never be liable for the loss of any Escrow Funds not insured by an agency of the Federal Government unless Escrow Agent has failed to deposit the Escrow Funds in accordance with the terms hereof.

In consideration for the services of Escrow Agent, Seller agrees to protect, indemnify and hold harmless Escrow Agent from any causes of action, damages and/or any or all expenses of whatever nature, either directly or indirectly, arising out of or as a consequence of disbursing said funds, or making a good faith effort to disburse said funds, in the manner shown above,

except that the foregoing indemnity shall not apply to the gross negligence or willful misconduct of Escrow Agent, or arising out of or as a consequence of any disagreement between the undersigned as to how or how much or to whom any part of said Escrow Funds are to be disbursed. In further consideration for the services of Escrow Agent, Buyer agrees to pay Escrow Agent for any or all loss, cost, damages or expenses of any kind arising out of or as a consequence of a breach of Buyer's obligations under this Agreement, or arising out of or as a consequence of the Principals' disagreement as to how or how much or to whom any part of said Escrow Funds are to be disbursed. Seller and Buyer further agree and acknowledge that said Escrow Agent is merely a stake-holder herein, and that it is authorized in the event of notice from any party hereto of such disagreements, if not resolved within ten (10) days, at its discretion, to place the Escrow Funds into the registry of any Texas state judicial district court in Travis County, Texas, having jurisdiction of law suits to determine the ownership of said Escrow Funds at the expense of Seller and Purchaser, which action, at the election of Escrow Agent, will automatically relieve it from all liability or responsibility as to these funds forever.

It is further agreed that if it is determined by The State Board of Insurance that the deposit of escrow funds in an interest bearing account is in violation of Chapter Nine of the Texas Insurance Code or, if subsequent to the date thereof, The State Board of Insurance promulgates rules prohibiting the deposit of escrow funds in an interest bearing account, Escrow Agent is authorized to immediately give notice to the Principals thereof and then withdraw the Escrow Funds and deposit them in its regular escrow account.

[Remainder of this page intentionally left blank; signature page follows.]

EXECUTED in multiple counterpart originals effective as of July 31, 2008.

Seller:

COMANCHE CANYON DEVELOPMENT, INC.,
a Texas corporation

By: Robert H. Theriot
Name: ROBERT H. THERIOT
Title: PRESIDENT

Purchaser:

CITY OF AUSTIN,
a home rule municipal corporation located in Travis, Hays and Williamson Counties, State of
Texas

By: Lauraine Rizer
Name: Lauraine Rizer
Title: Manager, Office of Contract and Land
Management

Approved as to form:

ANDREWS KURTH LLP

By: Cassie B. Stinson
Name: Cassie B. Stinson, Partner
Special Counsel to City of Austin

Escrow Agent:

NORTH AMERICAN TITLE COMPANY

By: Georgia Duke
Name: GEORGIA DUKE
Title: PRESIDENT

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lots 40, 41 and 42, Block B, COMANCHE CANYON RANCH AREA THREE, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200600184, Official Public Records of Travis County, Texas.

EXHIBIT "B"

ESCROW INSTRUCTIONS AND PURPOSE OF ESCROW

All capitalized terms used in this EXHIBIT B and not defined herein shall have the meanings for such terms as set forth in the Purchase Agreement.

A. The funds described in clause A of the Escrow Agreement represent Buyer's funds for payment of Seller's costs incurred incident to Seller's application to USFW Service for the Concurrence, in excess of invoices submitted by Seller at Closing, but not to exceed \$20,000 in the aggregate. Upon Seller's presentation to Buyer of invoices for such costs, Buyer and Seller shall jointly direct Escrow Agent, in writing, to release the funds described in clause A in the amount of such invoices. Within one (1) business day after receipt of such written instructions, Escrow Agent shall disburse the requested funds to Seller.

B. The funds described in clause B of the Escrow Agreement represent Buyer's funds for payment of Seller's costs incurred incident to Seller's application to USFW Service for the request for a Minor Amendment, in excess of invoices submitted by Seller at Closing, but not to exceed \$30,000 in the aggregate. Upon Seller's presentation to Buyer of invoices for such costs, Buyer and Seller shall jointly direct Escrow Agent, in writing, to release the funds described in clause B in the amount of such invoices. Within one (1) business day after receipt of such written instructions, Escrow Agent shall disburse the requested funds to Seller.

C. The funds described in clause C of the Escrow Agreement represent a portion of the sale proceeds due to Seller if the Minor Amendment is issued. Seller and Buyer will act in good faith and take all actions necessary to apply for and obtain the Minor Amendment in accordance with the terms of the Purchase Agreement. Upon Seller's presentation to Buyer of the Minor Amendment, Buyer and Seller shall jointly direct Escrow Agent, in writing, to release the funds described in clause C, together with all interest in the Escrow Account, to Seller. If USFW Service refuses to issue the Minor Amendment, Buyer and Seller shall jointly direct Escrow Agent, in writing, to release the funds described in clause C, together with all interest in the Escrow Account, to Buyer. Within one (1) business day after receipt of such written instructions, Escrow Agent shall disburse the requested funds in accordance with such written instructions.

ANDREWS ATTORNEYS KURTH LLP

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Comments:
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PARTIAL ASSIGNMENT AND PARTIAL ASSUMPTION OF PERMIT AGREEMENT

STATE OF TEXAS §

COUNTY OF TRAVIS §

WHEREAS Comanche Canyon Development, Inc., a Texas corporation ("Assignor") has conveyed to the City of Austin, a home rule municipal corporation located in Hays, Travis and Williamson Counties, State of Texas (the "City") that certain parcel of real property in Travis County, Texas, more fully described on Exhibit "A" attached and incorporated by reference (the "Property");

WHEREAS Assignor has agreed, incident to conveyance of the Property, to assign to Buyer the Section 10(a) Permit No. TE – 004683-2, issued by the United States Fish and Wildlife Service (the "Permit") to the extent (but only to the extent) that the same relates to and concerns the Property (and not to any other property); and

WHEREAS the City has agreed to such partial assignment and partial assumption of the Permit;

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Assignor and City have agreed as follows:

Assignor has this day BARGAINED, SOLD, ASSIGNED, TRANSFERRED, AND CONVEYED, and by these presents does BARGAIN, SELL, ASSIGN, TRANSFER AND CONVEY to City the Permit, to the extent (but only to the extent) that the same relates to and concerns the Property (and not to any other property), to HAVE AND TO HOLD same unto the City, its successors and assigns, and Assignor does hereby bind Assignor, its successors and assigns to warrant and forever defend all and singular the said Permit unto the City, its successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject to the prior written approval of the United States Fish and Wildlife Service.

Upon approval of the Permit assignment to the City, City agrees to assume full and complete responsibility for compliance with all aspects of the Permit as to the Property, but not otherwise, and Assignor shall have no further right, title, obligation or duty under the Permit as it pertains to the Property; provided, however, that Assignor shall retain the obligation to file annual reports for all lands covered by the Permit including, but not limited to the Property. City hereby agrees to provide Assignor with all pertinent information regarding the Property necessary for the Assignor to fulfill its obligation to file annual reports for all land covered by the Permit including, but not limited to the Property. City further hereby covenants to Assignor, solely with regards to the Property to perform and comply with all obligations under the 10(a) Permit, as same pertains to the Property. Further, City hereby covenants to Assignor, solely with regards to the Property to maintain the 10(a) Permit in full force and effect and not to seek or obtain any future 10(a) Permit amendments that would materially impair or interfere with

Assignor's ability to comply with all of Assignor's obligations under the 10(a) Permit or Assignor's ability to maintain the 10(a) Permit in effect with regards to lands covered by the 10(a) Permit other than the Property. Assignor hereby covenants to City, solely with regards to lands covered by the 10(a) Permit other than the Property, to perform and comply with all obligations under the 10(a) Permit. Further, Assignor hereby covenants to City, solely with regards to lands covered by the 10(a) Permit other than the Property, to maintain the 10(a) Permit in full force and effect and not to seek or obtain any future 10(a) Permit amendments that would materially impair or interfere with City's ability to comply with all obligations under the 10(a) Permit or City's ability to maintain the 10(a) Permit in effect with regards to the Property.

Assignor and City stipulate and agree that violation, default or non-compliance of the Permit conditions by the City within the Property will not cross default to Assignor, and United States Fish and Wildlife Service's redress for remediation, compliance and/or mitigation related to use of the Property will be against the City. Further, violation, default, or non-compliance of the Permit conditions by Assignor outside the Property shall not cross default to the City and United States Fish and Wildlife Service's sole redress for remediation, compliance and/or mitigation related to use of land owned by Assignor, its successors and assigns will be against Assignor, its successors and assigns and not the City as owner of the Property.

This Partial Assignment and Partial Assumption of Permit Agreement may be executed in multiple counterpart originals, effective July 31, 2008.

**Comanche Canyon Development, Inc., a
Texas corporation**

Date: 7/31/08

Robert H. Theriot
By: ROBERT H. THERIOT
Its: PRESIDENT

**The City of Austin, a Texas home rule
municipal corporation**

Date: 7-30-08

By: Lauraine Rizer

Lauraine Rizer, Manager
Office of Contract and Land
Management

APPROVED AS TO FORM:

ANDREWS KURTH LLP

By: Cassie B. Stinson

Cassie B. Stinson, Partner
Special Counsel to City of Austin

4031545.1
7835.32448

HOU:2805365.10

AWU Initials: _____

Exhibit A

to

Partial Assignment and Assumption

Area 3, approximately 12.05 acres, being Lots 40, 41 and 42, Block B, COMANCHE CANYON RANCH AREA THREE, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200600184, Official Public Records of Travis County, Texas.

Beau Theriot Comanche Canyon Preserve Lands, Inc.

6535 Comanche Trail
Austin, Texas 78732

INVOICE

Date: 1/31/2019
Invoice # 43496.000 -1

Customer: City of Austin Water Treatment Plant #4
6800 North FM 620 Road
ATTN: MARK PENTON
Austin, TX 78732

Description:**Amount**

2019 First Quarter Preserve Dues (Area 3) \$3,020.02

| | | |
|----------------|----|----------|
| Subtotal | \$ | 3,020.02 |
| Misc. | \$ | - |
| Tax | \$ | - |
| Freight | \$ | - |
| Trade Discount | \$ | - |
| Payment | \$ | - |
| Total Due | \$ | 3,020.02 |

Invoice Approved for payment

5020 2200 60 _ _ _ _ _

Approved by: _____

Date: _____

RECEIVED

FEB 14 2019

Handcox WTP

Beau Theriot Comanche Canyon Preserve Lands, Inc.

6535 Comanche Trail
Austin, Texas 78732

INVOICE

Date: 1/31/2019
Invoice # 43496.000 -2

Customer: City of Austin Water Treatment Plant #4
6800 North FM 620 Road
ATTN: MARK PENTON
Austin, TX 78732

Description:

Amount

| | | |
|----------------------------------|----------|----------|
| 2019 First Quarter Preserve Dues | (Area 4) | \$587.23 |
|----------------------------------|----------|----------|

| | | |
|----------------|----|--------|
| Subtotal | \$ | 587.23 |
| Misc. | \$ | - |
| Tax | \$ | - |
| Freight | \$ | - |
| Trade Discount | \$ | - |
| Payment | \$ | - |
| Total Due | \$ | 587.23 |

Invoice Approved for payment

5020 2200 60 _ _ _ _ _

Approved by: _____

Date: _____

RECEIVED

FEB 14 2019

Handcox WTP



57

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

STATE OF TEXAS §

KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF TRAVIS §

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (the "Declaration"), is made on the date and year below written, by Robert H. Theriot ("Theriot") ("Declarant"), Brownstone Gallery, Inc., a Texas corporation ("Brownstone"), and Beau Theriot Comanche Canyon Preserve Lands, Inc., a Texas non-profit corporation.

RECITALS

WHEREAS, Declarant is the fee title owner of approximately one hundred and ten (110) acres of real property described more fully in Section 1.09 of the Declaration that may be developed under the Federal Permit (the "Development Property");

WHEREAS, Comanche Canyon Ranch, Inc. has obtained a Section 10a(1)(B) permit under the federal Endangered Species Act (TE-004683-1) for the Development Property (the "Federal Permit"), a copy of which is attached hereto as Exhibit A and incorporated herein by reference;

WHEREAS, pursuant to the terms of the Federal Permit and an agreement with Comanche Canyon Ranch, Inc., Theriot will convey approximately three hundred and twenty-three (323) acres of land (the "Preserve Land") to Beau Theriot Comanche Canyon Preserve Lands, Inc., a Texas non-profit corporation (the "Preserve Manager"), for the purpose of operating and maintaining the Preserve Land in accordance with the terms and conditions of the Federal Permit;

WHEREAS, except for a 9.0 acre tract and a 30 acre tract described below, Declarant is the owner of the Preserve Land;

WHEREAS, Declarant previously conveyed to Preserve Manager a 9.0 acre tract, being a portion of the 323 acre Preserve Land by a deed recorded in Document No. 2004241782, Official Public Records of Travis County, Texas, and more particularly described in the attached Exhibit C-5;

Declaration of Covenants, Conditions, and Restrictions

Page 1 of 14

WHEREAS, Brownstone is the owner of a 30 acre tract, being a portion of the Preserve Land and more particularly described in the attached Exhibit C-2;

WHEREAS, in order to meet the funding and preserve management requirements of the Federal Permit for the operation and maintenance of the Preserve Land, Declarant desires to impose certain covenants, conditions and restrictions on the Development Property and Declarant, Brownstone, and Preserve Manager desire to impose certain covenants, conditions and restrictions on the Preserve Land; and

WHEREAS, Declarant and Brownstone intend to bind the Preserve Manager and Preserve Manger intends to be bound with the obligation of managing in perpetuity the Preserve Land in accordance with the requirements of the Federal Permit.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, Declarant, Brownstone and Preserve Manager, each for itself and its successors, grantees, and assigns, hereby declare, with respect to the property owned by each, as follows: (a) the Development Property shall be held, sold, assigned, used, developed, conveyed, leased and occupied subject to the following applicable reservations, covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with the Development Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof; (b) each contract, assignment or deed that may hereafter be executed with regard to the Development Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the following covenants, conditions and restrictions regardless of whether or not the same are set out or referred to in said contract, assignment or deed; (c) the Preserve Land shall be held and managed subject to the following applicable reservations, covenants, conditions and restrictions, which are for the purpose of assuring that the Preserve Land is managed in perpetuity in accordance with the terms of the Federal Permit, and (d) which said reservations, covenants, conditions and restrictions shall run with the Preserve Land.

ARTICLE I DEFINITIONS

In this Declaration, the terms used shall have the following meaning :

1.01 "Assessment" shall mean such assessments as may be levied by the Preserve Manager on each Lot under the terms and provisions of this Declaration and shall include both regular and special assessments.

1.02 "Preserve Manager" shall mean the Beau Theriot Comanche Canyon Preserve Lands, Inc., a Texas non-profit corporation or any successor entity approved by United States Fish and Wildlife Service.

Declaration of Covenants, Conditions, and Restrictions

Page 2 of 14

1.03 "Declarant" shall hereafter mean and refer to Robert H. Theriot or such successors or assigns as may be appointed in a writing in accordance with paragraph 4.06 below.

1.04 "Declaration" shall mean this instrument, as the same may be from time to time amended.

1.05 "Development Property" shall mean and refer to the approximately one hundred and ten (110) acres of land more particularly described in Exhibit B attached hereto and incorporated herein by reference.

1.06 "Lot" shall mean each individual and separate parcel of land located within the Development Property that is shown as a lot in a duly recorded subdivision plat in the Official Public Records of Travis County, Texas.

1.07 "Owner(s)" shall mean and refer to the record fee simple interest owner of any Lot, whether one or more persons, associations or entities. The foregoing does not include persons or entities who hold interest in a Lot merely for the security for the performance of an obligation. Any reference herein to Owners shall include Owners as defined herein and as defined or included in any supplemental declaration. If any Lot is leased, the term Owner(s) shall include lessees,

1.08 "Preserve Land" shall mean the approximately three hundred and twenty-three (323) acres of land more particularly described in Exhibit C attached hereto and incorporated herein by reference.

1.09 "Preserve Land Management Plan" shall mean the management plan for the Preserve Land that has been approved by the United States Fish and Wildlife Service. Because the Federal Permit includes adaptive management, the Preserve Land Management Plan may change over time but must always be approved by the United States Fish and Wildlife Service.

ARTICLE II PRESERVE LAND

2.01 Allowed Use of Preserve Land. The Preserve Land shall be preserved in its natural state for the benefit of the golden-cheeked warbler in perpetuity. Unless authorized in writing by the United States Fish and Wildlife Service, the Preserve Land may only be used, managed or modified in accordance with the terms of the Federal Permit and the Preserve Management Plan. All woodland areas shall be maintained as woodland, and areas of the Preserve Land that are not woodland shall be allowed to succeed naturally to woodland. Any clearing of woodland habitat for safety concerns shall be coordinated

with the U.S. Fish and Wildlife Service. No livestock of any kind will be allowed in Preserve Areas. Free-roaming dogs and cats shall not be allowed in the Preserve. No deer feeders, except as a management tool, or bird feeders will be allowed in the Preserve Lands. Mountain biking, horseback riding, and the dumping of material (including pool water, grass clippings, brush), pesticides, herbicides, fertilizers, or anything else not consistent with the conservation of the golden-cheeked warbler shall be prohibited. No hiking trails will be constructed without approval of the U.S. Fish and Wildlife Service. No motorized vehicle shall be permitted within the Preserve Lands except as needed for Preserve maintenance. No public access to the Preserve Lands will be allowed except as authorized by the Preserve Manager. Preserve Manager shall use reasonable efforts, such as reporting trespass and vandalism to local authorities, to prevent third-party use of the Preserve Land in a manner not permitted under the Federal Permit or the Preserve Management Plan. Preserve Manager shall maintain adequate fencing around the Preserve Lands and arrange periodic patrols to stop unauthorized third party access to the Preserve Lands.

2.02 Preserve Manager. The Beau Theriot Comanche Canyon Preserve Lands, Inc. has been created for the purpose of properly managing the Preserve Land in accordance with the requirements of the Federal Permit and the Preserve Management Plan in perpetuity. The Preserve Manager shall be responsible for drafting and submitting to the United States Fish and Wildlife Service for approval any changes to the initial Preserve Land Management Plan. The Preserve Management Plan shall be reviewed by the United States Fish and Wildlife Service at least once every five years. Notwithstanding the expiration of the Federal Permit, the Preserve manager shall submit an annual report to the United States Fish and Wildlife Service regarding Preserve Manager's obligations under the Declaration. The obligations of the Preserve Manager include raising sufficient funds on an annual basis (i) to fund the operations and management of the Preserve Land in accordance with the Federal Permit and (ii) to contract with qualified contractors to carry out the management activities required by the Declaration. The obligations of the Preserve Manager imposed by the Declaration are hereby declared to be covenants running with the land and binding upon the Preserve Manager and any subsequent owner of the Preserve Land. The obligations of the Preserve Manager imposed by the Declaration shall continue in perpetuity, including after the expiration of the Federal Permit.

2.03 Restrictions On Conveyances. The Preserve Land may be conveyed only to an entity approved by the United States Fish and Wildlife Service.

2.04 Right of Entry. The United States Fish and Wildlife Service and its employees shall, upon at least 72 hours prior, confirmed notice to the Preserve Manager or its agent, have a right to enter the Preserve Land on not more than a quarter-annual basis for the purpose of inspection for compliance with the Declaration. In the event that the Preserve Manager has defaulted in meeting its obligations under the Declaration, then the United States Fish and Wildlife Service shall have the right, upon at least 24 hours

prior, confirmed notice to the Preserve Manager, to enter the Preserve Land for the purpose of inspection for compliance with the Declaration.

ARTICLE III ASSESSMENTS ON DEVELOPMENT LAND

3.01 General Assessment Authority. The Preserve Manager may, from time to time, levy Assessments against each Lot, whether or not improved, for expenses incurred in owning, operating and managing the Preserve Land in accordance with the Federal Permit and the Preserve management Plan. Assessments shall be made and funds shall be expended to fulfill the requirements of the Federal Permit and the Preserve Management Plan.

3.02 Calculation Of Assessments. The Declarant intends that the Development Property will consist of Lots designated for the following five types of structures: (i) Single Family, (ii) Condominium, (iii) Townhome, (iv) Commercial/Office, and (v) Retail. Each Lot within the Development Property shall be assessed under this Declaration based on the number of living unit equivalents ("LUE") of water service allocated to or used by the Lot. Common ownership of any two or more Lots shall not affect the allocation of LUEs per Lot. Until a Lot is actually connected to the water system, the number of LUEs assigned to a particular Lot shall be accordance with Exhibit 4 attached hereto and incorporated herein by reference. A Lot with a single family-detached house is presumed to have one LUE unless a water meter larger than 5/8" is installed, in which case the chart below will be used to determine the number of LUEs allocated to the Lot. A Lot with a Condominium or Townhome project will be allocated a number of LUEs based on the number of living units multiplied by the LUE factor of 0.7 LUEs per living unit. Once a Lot with a non-residential use (Commercial/Office or Retail) has a water meter, the number of LUEs allocated to the Lot shall be determined by the size of the water meter in accordance to the following schedule (the "LUE Allocation"):

"LUE Allocation".

| Size of Meter | Number of LUEs |
|---------------|----------------|
| 5/8" | 1 |
| 3/4" | 1.5 |
| 1" | 2.5 |
| 1 1/2" | 5 |
| 2" | 8 |
| 3" | 15 |

Declaration of Covenants, Conditions, and Restrictions

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| | |
|----|----|
| 4" | 25 |
| 6" | 50 |
| 8" | 90 |

The amount of an Assessment will be determined by dividing (i) the LUE allocated to or used by each Lot by (ii) the combined LUEs allocated to and used by Lots within the Development Property. The percentages will be modified (a) as additional water capacity is added to the Development Property, (b) as allocations or use of water LUEs are increased or decreased for a Lot and (c) as the Preserve Manager determines appropriate. In the event that the utility providing water service to the Development Property adopts a different allocation of LUEs to a particular water meter size, the Preserve Manager shall re-calculate the next Assessment based on the new LUE allocation from the utility.

3.03 Assessments Against Declarant. Declarant shall not be exempt from the payment of any Assessments.

3.04 Annual Assessments. Prior to the beginning of each calendar year, the Preserve Manager shall estimate the expenses to be incurred during the coming year in performing and fulfilling the obligations created under this Declaration and the Federal Permit, including all reasonable expenses to be incurred by Preserve Manager less revenue from other sources or surplus funds from the prior calendar year. Assessments shall be sufficient to (i) pay such estimated expenses and (ii) maintain a reasonable contingency fund for unexpected expenses and shall be levied as provided herein. Each Assessment shall be final and binding so long as it is made in good faith. If the sum collected is inadequate for any reason, including nonpayment of any individual Assessment, the Preserve Manager may at any time, and from time to time, levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Preserve Manager at the beginning of the calendar year or during the calendar year in equal monthly, quarterly, semi-annual or annual installments, as the Preserve Manager determines, in its sole discretion, on or before the first day of the applicable period.

3.05 Special Assessments. In addition to the annual assessments authorized above, the Preserve Manager may levy, in any calendar year, a special assessment, applicable to that year only, for the purpose of defraying in whole or, in part, any deficit created by an excess of expenditures of the Preserve Manager over receipts for the previous year.

3.06 Operating Fund. The Preserve Manager shall establish an Operating Fund into which shall be deposited all Assessments paid to the Preserve Manager and from which disbursements shall be made in performing the functions of the Preserve Manager under this Declaration.

3.07 Personal Obligation for Payment of Assessments. The Regular Assessment and Special Assessments, together with interest thereon, attorneys' fees, court costs and other costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which any such Assessment is made. Each such Assessment, together with interest thereon, attorneys' fees, court costs, and other costs of collection thereof shall also be the continuing personal obligation of the Owner of such Lot at the time when the Assessment fell due. Further, no Owner may exempt himself from liability for such Assessments or waive or otherwise escape liability for the Assessments by abandonment of his Lot. Existing obligations of an Owner to pay Assessments and other costs and charges shall not pass to bona fide first lien mortgagees which become Owners by reason of foreclosure proceedings or an action at law subsequent to the date the Assessment was due; provided, however, any such foreclosure proceeding or action at law shall not relieve such new Owner of such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent Assessment. In the event of default in the payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest at the rate of twelve percent (12%) per annum on the amount of the Assessment.

3.08 Assessment Lien and Foreclosure. A lien in favor of the Preserve Land, Inc. is hereby created for all sums assessed in the manner provided in this Article. These sums together with interest as provided in Section 3.07 hereof and the cost of collection, including attorney's fees as herein provided, thereupon shall create a lien and charge on each Lot covered by such Assessment, which shall continue and bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns as a lien (the "Assessment Lien"). The Assessment Lien shall be superior to all other liens and charges against the said Lot, except only for tax liens and all sums unpaid on the first mortgage lien or first deed of trust lien of record, securing in either instance sums borrowed for the improvement of the Lot in question. To evidence the aforesaid Assessment Lien, the Preserve Manager may prepare a written notice of Assessment Lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien, and a legal description of the Lot. Such notice shall be signed by one of the officers of the Preserve Manager and shall be recorded in the office of the County Clerk of Travis County, Texas. Such Assessment Liens shall attach with the priority above set forth from the date that such payment becomes delinquent, and may be enforced by the foreclosure of the defaulting Owner's Lot by the Preserve Manager in like manner as a mortgage on real property at any time subsequent to the recording of a notice of Assessment Lien as provided above. The Preserve Manager may also institute suit against the Owner personally obligated to pay the Assessment and/or for foreclosure of the Assessment Lien judicially. In any foreclosure proceeding, whether judicial or non-judicial, the Owner shall be required to pay all costs, expenses and reasonable attorney's fees incurred by the foreclosing party. The Preserve Manager shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the

written request of any mortgagee, the Preserve Manager shall report to said mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due.

ARTICLE IV MISCELLANEOUS

4.01 Power of Declarant. Notwithstanding anything in this Declaration to the contrary, so long as Declarant owns two or more Lots, each Owner, by acceptance of record title conveying a Lot to such Owner or by ratification and approval of this Declaration, does hereby irrevocably constitute and appoint Declarant, its true and lawful attorney-in-fact and agent to execute, acknowledge, verify, swear to, deliver, record and file in that Owner's name, place and stead all instruments, documents and certificates which may from time to time be required in order to affect any amendment to this Declaration.

4.02 Term. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run with the all the Lots within the Development Property until December 31, 2049, unless amended as herein provided. After December 31, 2049, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by written instrument executed by the Preserve Manager and filed in the Official Public Records of Travis County, Texas. The provisions of the Declaration shall survive the expiration of the Federal Permit.

4.03 Amendment. Subject to (c) below, the Declaration may be amended as follows:

- (a) By Permittee Under Federal Permit. As long as the permittee under the Federal Permit is the Owner of any two or more Lots in the Development Property, this Declaration may be amended by the said permittee until December 31, 2020. Such Amendment by said permittee shall be effective as to all Lots.
- (b) By Preserve Manager In addition to the method in Section 4.03 (a), this Declaration may be amended by the recording in the Official Public Records of Travis County, Texas, an instrument executed and acknowledged by the President and Secretary of the Preserve Manager, setting forth the amendment and certifying that such amendment has been approved by the board of directors of the Preserve Manager.
- (c) Approval By U.S. Fish & Wildlife And Recording Required. No amendment to or written instrument to terminate the Declaration shall be effective unless the United States Fish & Wildlife Service has signed the amendment indicating its approval of the

amendment. No amendment shall be effective until there has been recorded in the Official Public Records of Travis County, Texas, an instrument executed and acknowledged by the permittee under the Federal Permit or the Preserve Manager, setting forth the amendment.

4.04 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United State mail, postage prepaid, addressed to the person at the address given by such person to the Preserve Manager for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Preserve Manager.

4.05 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a system of Assessments to fund the operation and maintenance of the Preserve Land. This Declaration shall be construed and governed under the laws of the State of Texas.

4.06 Right of Assignment of Declarant. Declarant may assign, its privileges, exemptions, rights and duties under this Declaration to any other person or entity only in conjunction with the assignment of the Federal Permit to the same assignee, as approved by the United States Fish and Wildlife Service. The mere conveyance of a Lot without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder. In order for any such assignment to be effective, it shall be made in writing and filed of record in the Official Public Records of Travis County, Texas.

4.07 Enforcement and Nonwaiver.

(a) Right of Enforcement By Declarant. Except as otherwise provided herein, Declarant shall have the right to enforce all of the provisions of the Declaration, including, the Preserve Manager assessing Lots, the collection of Assessments by the Preserve Manager, and Preserve Manager's obligation to manage the Preserve Land in accordance with the requirements of the Declaration. Declarant's right to enforce the obligations of the Declaration shall include both damages for, the breach of any such provision, and shall include the right to obtain damages from the breaching party, including reasonable attorney's fees incurred in enforcement hereof. In addition, Declarant may seek specific performance against the Preserve Manager to perform its duties hereunder. In the event that the United State Fish and Wildlife Service has either suspended the Federal Permit pursuant to 50 C.F.R. § 13.27 or has threatened to revoke the Federal Permit pursuant to 50 C.F.R. § 13.28, Declarant may seek and obtain a court

order compelling the Preserve Manager to assign all of its rights and obligations hereunder to another entity that has been approved by the United States Fish and Wildlife Service. Declarant's right to enforce the Declaration shall expire upon the expiration of the Federal Permit. The term "expire" does not include suspension or termination of the Federal Permit.

- (b) Right of Enforcement By Preserve Manager Except as otherwise provided herein, Preserve Manager shall have the right to enforce all of the provisions of the Declaration. Such right of enforcement includes (i) both damages for, and injunctive relief against, the breach of any such provision, and (ii) the right to obtain damages from the breaching party for reasonable attorney's fees incurred in enforcement hereof.
- (c) Right of Enforcement By United States Fish & Wildlife Service. In the event that the Preserve Manager dissolves, ceases to operate or otherwise meet its obligations under the Declaration, the United States Fish & Wildlife Service shall have the right to enforce the provisions of the Declaration. Such right of enforcement may be brought in state or federal court and includes all available legal and equitable remedies, including obtaining a court order compelling the Preserve Manager to assign title to the Preserve Land and all of Preserve Manager's rights and obligations hereunder to another entity approved by the United States Fish and Wildlife Service.
- (d) Non-waiver. The failure to enforce any provision of this Declaration, at any time, shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Declaration.
- (e) Liens. The Preserve Manager shall have the right, when appropriate in its judgment, to claim or impose a lien upon any Lot in order to enforce any right or effect compliance with this Declaration.
- (f) Injunctive Relief. Irreparable harm will result to Declarant, the Preserve Manager and the United States Fish and Wildlife Service by reason of any breach of the agreements, covenants and restrictions as set forth in the Declaration, and, therefore, Declarant, the United States Fish and Wildlife Service and the Preserve Manager shall be entitled to relief by way of injunction or specific performance to enforce the provisions of this Declaration, as well as any other relief available at law or in equity. Damages shall not be deemed adequate compensation for any breach or violation of any provision of this Declaration, and Declarant shall be entitled to relief by way of injunction, as well as any other remedy either at law or in equity.

- (g) Right To Cure. Prior to the filing a lawsuit to enforce compliance with the Declaration, the party seeking to enforce the Declaration shall provide written notice of such failure to comply with the Declaration and the party receiving such notice of non-compliance shall have a reasonable period of time to cure such non-compliance.

4.09 Construction.

- (a) Restrictions Severable. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not effect the validity or enforceability of any other provision or portion thereof.
- (b) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.
- (c) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof.
- (d) Preserve Manager and Brownstone Not Declarants. This Declaration shall not be construed as giving or making Preserve Manager or Brownstone a Declarant.

4.10 U.S. Fish and Wildlife Obligations

- (a) The United States shall not be liable in monetary damages to any other Party or other person for any breach of this Declaration, any performance or failure to perform a mandatory or discretionary obligation imposed by this Declaration, or other cause of action arising under this Declaration.
- (b) With regard to the U.S. Fish and Wildlife Service, implementation of this Declaration is subject to the requirements of the Federal Anti-Deficiency Act.
- (c) Nothing contained in this Declaration is intended to limit the authority of the U.S. Fish and Wildlife Service to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the Endangered Species Act and other applicable laws.

4.11 Acceptance of Obligations. By signing below, Preserve Manager agrees that it shall manage the Preserve Land, including said 9.0 acre tract previously conveyed to Preserve Manager, in accordance with the Declaration and meet all other obligations set forth in the Declaration.

Dated this 17th day of June, 2005.

DECLARANT:

ROBERT H. THERIOT

By: 

Robert H. Theriot

BROWNSTONE GALLERY, INC., a Texas corporation

By: 

Robert H. Theriot, President

AGREED TO THIS 17th day of June, 2005.

BEAU THERIOT COMANCHE CANYON PRESERVE LANDS, INC.

By: Shirley Shaw
Shirley Shaw, President

APPROVED AS TO FORM AND CONTENT ONLY

UNITED STATES FISH AND WILDLIFE SERVICE

By: Robert T. Pine
Name: Robert T. Pine
Title: Administrator

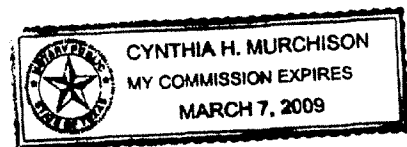
Date: June 17, 2005

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 17th day of June, 2005 by
Robert H. Theriot

Cynthia H. Murchison
Notary Public, State of Texas

Cynthia H. Murchison
Printed Name of Notary

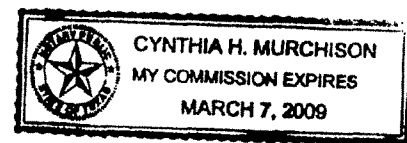


THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 17th day of June, 2005 by
Robert H. Theriot, President, on behalf of Brownstone Gallery, Inc., a Texas corporation.

Cynthia H. Murchison
Notary Public, State of Texas

Cynthia H. Murchison
Printed Name of Notary



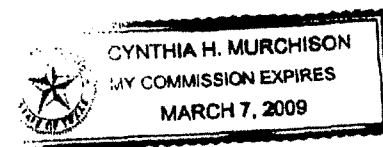
Declaration of Covenants, Conditions, and Restrictions

Page 13 of 14

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 17th day of June, 2005 by Shirley Shaw, President, on behalf of Beau Theriot Comanche Canyon Preserve Lands, Inc.

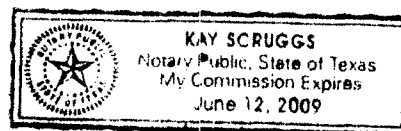
Cynthia H. Murchison
Notary Public, State of Texas
Cynthia H. Murchison
Printed Name of Notary



THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 17th day of June, 2005 by Robert Pine, ~~Field Supervisor~~ Administrator, United States Fish and Wildlife Service.

Kay Scruggs
Notary Public, State of Texas
Kay Scruggs
Printed Name of Notary



AFTER RECORDING RETURN TO:

Mr. Robert J. Kleeman
Munsch, Hardt, Kopf and Harr
600 Congress Avenue, Suite 2900
Austin, Texas 78701

Declaration of Covenants, Conditions, and Restrictions

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AUSTIN 856041_5 7967.1

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

3-201
(1/97)



FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

Comanche Canyon Ranch, Inc.
6550 Comanche Trail
Austin, TX 78732

(512) 266-7810

2. AUTHORITY-STATUTES

16 USC 1539(a)(1)(B)

REGULATIONS (Attached) 1

50 CFR §§ 13 & 17

3. NUMBER

TE 004683-1

4. RENEWABLE

☒ YES
☐ NO

5. MAY COPY

☒ YES
☐ NO

6. EFFECTIVE

12/3/2004

7. EXPIRES

7/17/2030

8. NAME AND TITLE OF PRINCIPAL OFFICER (If # 1 is a business)

Mr. Robert H. Theriot, President

9. TYPE OF PERMIT

ENDANGERED SPECIES INCIDENTAL TAKE

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

Approximately 446-acre Comanche Canyon Ranch, Inc., in Travis County, Texas

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2, ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORDANCE WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW. THIS PERMIT DOES NOT WAIVE THE OBLIGATION TO ABIDE BY OTHER FOREIGN, STATE, LOCAL OR FEDERAL LAW IN CARRYING OUT AUTHORIZED ACTIVITIES.
- C. VALID FOR USE BY PERMITTEES NAMED ABOVE.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE UNDERSTANDS AND AGREES TO ABIDE BY THE "Special Conditions for Marine Mammals and Native Endangered and Threatened Species" (copy enclosed).

11. ADDITIONAL CONDITIONS AND AUTHORIZATIONS ON ATTACHED ALSO APPLY

12. REPORTING REQUIREMENTS

Annually, on October 1.

ISSUED BY:

Boye Ag

TITLE

REGIONAL DIRECTOR

DATE

November 30, 2004

EXHIBIT

A

1075-001

144

- E. The Permittee is authorized for take of golden-cheeked warbler (*Dendroica chrysoparia*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Tooth Cave spider (*Neoleptoneta myopica*), and Tooth Cave ground beetle (*Rhadine persephone*) on the 446 acre property, incidental to activities necessary for the residential and commercial construction described in the permittee's application.
- F. The Permittee or his assignee will only clear vegetation in, or within 300 feet of, golden-cheeked warbler habitat during the time of the year when golden-cheeked warblers are not breeding (August 1 through February 28) unless breeding season surveys performed by a Service-permitted biologist (according to Service guidelines) indicate that no warblers are present within 300 feet of the desired activity. Construction activities in or within 300 feet of warbler habitat may be initiated during the time of year when warblers are present so long as such construction follows permitted clearing in a prompt and expeditious manner indicating a continuous activity.
- G. The Permittee or his assignee will minimize clearing for construction of buildings, streets, and other areas of impervious cover to the greatest extent practicable.
- H. The Permittee or his assignee shall be consistent with the current practices recommended by the Texas Forest Service to prevent the spread of oak wilt during clearing for construction within the proposed development areas.
- I. The Permittee or his assignee will comply with the label guidelines for application of herbicides and pesticides.
- J. The Permittee or his assignee will prohibit the use of deer feeders or bird seed feeders in residential yards and in preserve areas through deed restrictions.
- K. The Permittee or his assignee will prohibit free-roaming cats and dogs through deed restriction.
- L. Excavation of the property will not require a site geologist to be present, but the procedures contained in Conditions M through O will still be followed if any caves, karst features, or subterranean voids are encountered.
- M. If any caves, karst features, or subterranean voids are encountered during construction, then construction work within 500 feet of the encountered voids will halt until project environmental consultants have completed necessary evaluations. The Service will be notified immediately. The Permittee will have a qualified geologist or geohydrologist familiar with karst invertebrates respond immediately to evaluate the void geologically to determine if it has the potential to contain endangered karst invertebrate habitat. If the potential for habitat is evident, the Permittee will have the feature examined by a qualified karst invertebrate biologist, approved by the Service, for the presence of the listed karst invertebrates. Three biological collection surveys will be conducted on three separate days over a period not greater than one week to determine the presence or absence of the listed invertebrates or other species of concern. Between surveys, voids should be covered to prevent drying, but still allow nutrient input. A report of the surveys,

including climate data inside and outside of the cave, will be submitted to the Service immediately.

- N. If no endangered, threatened or species of concern are determined to be present in an encountered feature, environmental consultants will issue specific instructions in accordance with standard Texas Natural Resource Conservation Commission accepted practices, as applicable, for any particular void. If sealed, voids will not allow any impacts or contamination into the karst ecosystem. The Service will be notified of methods used for dealing with the void. Construction activity will then resume with the carrying out of those specific instructions. The Service will be notified of findings prior to resuming construction activities.
- O. If endangered, threatened or species of concern are determined to be present within an encountered feature, the Permittee will consult with the Service to determine avoidance or mitigation measures and implement these (either on-site or off-site) depending, in part, on the species involved and the extent of effect. Upon completion or implementation of the avoidance procedures (following inspection and approval by the environmental consultants), the work may resume.
- P. Approximately 336 acres will be preserved in perpetuity by being donated to Travis County or another conservation entity approved by the Service. The operation and maintenance of the preserve will be turned over to Travis County or other conservation entity approved by Service through a conservation easement to be managed according to Balcones Canyonlands Preserve land management plans.
- Q. After considering carefully the direct and indirect impacts of the development, construction, and occupation of Comanche Canyon Ranch, including associated roads and utilities, and taking into account the substantial avoidance of habitat areas on the property and the areas that the Permittee will maintain as preserve, the Service has concluded that the lands considered for preserve represent mitigation of impacts to the golden-cheeked warbler in excess of that required to adequately mitigate for the impacts of the development project. Such excess mitigation is in the amount of 123 acres of golden-cheeked warbler habitat. The Permittee (subject to Service approval) will be entitled to "bank" this excess mitigation in perpetuity for use in connection with possible future revisions to project envelopes or other projects pursued by the Permittee, or for transfer and sale to third-parties needing to provide mitigation for projects within the same recovery unit for the golden-cheeked warbler. The Permittee and the Service will establish a record-keeping system for tracking ownership and utilization of the excess mitigation credits. Each of the excess mitigation credits will be construed by the Service as providing the same mitigation value for similar habitat type (i.e. zone 1 or 2) as a one-acre golden-cheeked warbler Balcones Canyonlands Preserve Participation Certificate or one acre of golden-cheeked warbler habitat of long-term preserve quality.
- R. The Permittee will provide funding for the operation and maintenance of the approximately 336 acres as a preserve for golden-cheeked warbler. The amount of funding will be agreed upon by the Permittee and Travis County or other conservation entity prior to issuance of the Section 10(a)(1)(B) permit.

- S. The Permittee or his assignee, to the extent practical, will allow vegetation within preserve areas of Comanche Canyon Ranch that currently do not support golden-cheeked warbler habitat to be allowed to succeed to a wooded state in order to increase the amount of potentially suitable warbler habitat on site.
- T. The Permittee or his assignee will phase off cattle or other domestic livestock from the property over a period of four years. No livestock of any kind will be allowed in the preserve areas after that time.
- U. Activities implementing the conservation measures will be reported in an annual report to the Service due on the anniversary of permit issuance.
- V. Compliance monitoring surveys of golden-cheeked warbler territories will be conducted and mapped for the Comanche Canyon Ranch Tract every other year from the construction phase through the second year following attainment of 95% project buildout to assess how development of the property affects the local warbler population.
- W. Any unforeseen circumstances or preserve conditions determined to be detrimental to warblers will trigger the need to consult with the Service for advice on adaptive management. The preserve manager must report immediately, any site conditions or disturbances found of which it does not possess a way or means to readily correct.
- X. If vandalism of preserves is detected, the Service as well as local law enforcement authorities, will be immediately notified. Any effects of vandalism will be documented and then corrected, as appropriate, as quickly as possible.
- Y. Storm damage to preserves will be assessed and documented as soon as possible. The Service will be notified and corrective measures implemented, as appropriate.
- Z. The Permittee shall immediately notify the Fire Department and the Service of any fire, wild or deliberate. Following extinguishment and assessment of any impacts corrective actions will be implemented, as appropriate.
- AA. In the case of spills of hazardous materials on roadways or lawns, the Permittee shall immediately notify the Fire Department who has spill response capability and plans. The Permittee shall immediately notify the Service and begin assessment of any damages.
- BB. Adjacent landowners surrounding Comanche Canyon Ranch may conduct activities deemed potentially damaging to the preserve areas. In such event, the Service would be immediately notified and corrective measures implemented by the Permittee, as appropriate.
- CC. There are always possibilities for unforeseen circumstances to occur. In these cases, such circumstances will be assessed for potential impacts and corrective measures implemented by the Permittee, as appropriate, in consultation with the Service.

- DD. If Travis County accepts the conservation easement for the preserve, then they will manage the land according to the Balcones Canyonlands Preserve regional permit (PRT #788841) and approved land management plans.
- EE. Written annual reports of the years activities, including presence/absence surveys for the golden-cheeked warbler as described in the implementing agreement and status of clearing and construction, will be submitted by October 1 of each year to the U.S. Fish and Wildlife Service Office 10711 Burnet, Suite 200, Austin, Texas 78758; and to the U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico, 87103.
- FF. Upon locating a dead, injured, or sick golden-cheeked warbler, or any other endangered or threatened species, the Permittee is required to contact the Service's Law Enforcement Office, San Antonio, Texas, (210)681-8419, for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, the Permittee and its contractor/subcontractor have the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.
- GG. Conditions of this permit shall be binding on and for the benefit of the Permittee and their respective successors and assigns. If the permit requires an amendment because of change of ownership, the Service will process that amendment without the requirement of the Permittee preparing any new documents or providing any mitigation over and above that required in the original permit. The construction activities proposed or in progress under an original permit may not be interrupted provided the required special conditions of an issued permit are being followed.
- HH. If during the tenure of this permit the project design and/or the extent of the habitat impact described in the habitat conservation plan is altered, such that there may be an increase in the anticipated take of the golden-cheeked warbler, the Permittee is required to contact the Service and obtain authorization and/or amendment of the permit before commencing any construction or other activities that might result in take beyond that described in the EA/HCP.

If a conservation entity other than Travis County manages the preserve, then the following adaptive management and monitoring measures will be implemented:

- II. A representative of the management entity will attend meetings of the Balcones Canyonlands Preserve Land Management Committee.
- JJ. The preserve areas of the Comanche Canyon Ranch Tract will be monitored every other year by the conservation entity for indications that the health of the golden-cheeked warblers (i.e., population) or their habitat is beginning to be negatively impacted by other animals or other factors. Annual golden-cheeked warbler territorial surveys following Service approved protocol will be conducted in the preserve area and results reported to the Service. The preserve area should be monitored for the occurrence of these factors, such as an increase in the number of

white-tailed deer on the preserve, which could directly impact the golden-cheeked warbler or its habitat. Aspects of the habitat that should be monitored may include, but are not limited to, a decline in oak seedling recruitment, indications of increased browsing pressure, a prevalence of fire ant mounds, and the threat of wildfire. Additionally, the tract will be monitored for a relatively high number of potential mammalian predators of golden-cheeked warblers, indications of excessive cowbird parasitism, and for indirect or direct human disturbances.

- KK. Deer and feral hogs often occur in greater density adjacent to suburban areas than in undeveloped areas due to greater availability of food and lower predation rates. High densities of deer and feral hogs may have a long-term adverse affect on the abundance and distribution of deciduous tree species in the Comanche Canyon Ranch preserve areas by increasing browsing pressure on seedlings and saplings. The subsequent decrease in the deciduous tree component of the forested areas would lead to an overall decrease in the habitat value of the area for golden-cheeked warblers. Therefore, if the effects of excessive browsing pressure or a lack of oak seedling recruitment are noticed, the conservation entity will coordinate with the Service to determine appropriate techniques to control browsing. Such techniques may include fencing, hunting, and/or other deer number reduction programs. Through deed restriction, deer feeders in residential yards and in preserve areas are prohibited because supplemental feeding could contribute to an increased deer population. The preserve area will be available for deer censusing conducted by the state or other agencies interested in assessing deer and feral hog population levels.
- LL. Some problem mammals which predate songbird eggs and young are domestic and feral cats, raccoons, opossums, and skunks. If home/business owners begin to notice an increase in the number of human interactions with raccoons, skunks, or opossums, or other indicative signs, such as an increase in the amount of scat observed, a live-trapping program to reduce the number of mammalian predators should be implemented. Such a program should only be implemented after consultation with the Service.
- MM. Imported red fire ants have been recently shown to prey upon the chicks of arboreal nesting birds. If fire ant mounds are encountered during routine monitoring activities, then fire ants may be controlled with an Integrated Pest Management program using approved chemicals and bait formulations. Fire ant control should be designed to minimize impact on native ants and other flora and fauna.
- NN. Brown-headed cowbirds, an open-field species, are well known for parasitism of songbird nests. If the conservation entity determines that cowbird trapping is necessary on the Comanche Canyon Ranch tract, the Permittee will cooperate with the Service and the conservation entity in the placement and operation of cowbird traps.
- OO. Development of the Comanche Canyon Ranch tract should not appreciably increase the potential for occurrence of a catastrophic wildfire within the proposed preserve areas. If the presence of fire breaks on the Comanche Canyon Ranch tract is determined necessary by the Service and the Permittee, such fire breaks would normally be created outside of preserve areas to avoid destruction of golden-cheeked warbler habitat. However, it is possible that a prolonged drought

could occur that would greatly increase the potential for a catastrophic wildfire event. In such a case, the security provided by the creation of fire breaks within preserve areas may outweigh the loss of a small amount of golden-cheeked warbler habitat. The Permittee will seek Service approval of any fire breaks to be created within preserve areas, prior to construction. In the event of a drought, signs will be placed at prominent locations around the preserve warning of the fire hazard conditions.

- PP. Any activities occurring within preserve areas outside of the golden-cheeked warbler breeding season with potential to adversely affect golden-cheeked warbler habitat (e.g. trails) will be coordinated with the Service. Motorized vehicles will be prohibited from preserve areas at all times, unless otherwise allowed by the Service to facilitate operation and maintenance of preserve areas. Mountain biking and horseback riding in the preserve area will be prohibited.
- QQ. Clearing for construction of buildings, streets, and other areas of impervious cover will be minimized to the greatest extent practicable. Areas outside of platted lots that are disturbed during construction, but are not occupied by impervious surfaces, will be replanted with native oaks and other native vegetation.

-END of PERMIT # TE-00463-1-

METES AND BOUNDS DESCRIPTION

BEING 48.317 ACRES OF LAND LOCATED IN THE S. BULLOCK SURVEY NO. 76, ABSTRACT 2601, THE S. BULLOCK SURVEY NO. 76, ABSTRACT NO. 2624, AND THE D.J. RIORDAN SURVEY NO. 76, ABSTRACT 2618, IN TRAVIS COUNTY, TEXAS; SAME BEING ALL OF THAT CERTAIN CALLED 12.00 ACRE TRACT CONVEYED TO ROBERT H. THERIOT BY DEED RECORDED IN VOLUME 13396, PAGE 20 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, AND A PORTION OF THOSE CERTAIN LOTS NUMBERED 16-25 AND UNDEDICATED OASIS VIEW SHOWN ON UNRECORDED PLAT OF COMANCHE PASS SECTION 2 CONVEYED TO ROBERT H. THERIOT BY DEED RECORDED IN VOLUME 13246, PAGE 952 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, AND ALL OF THAT CERTAIN CALLED 1.00 ACRE TRACT CONVEYED TO SHIRLEY SHAW BY DEED RECORDED IN DOCUMENT NO. 2002249058 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND A PORTION OF A 89.52 ACRE REMAINDER OF THOSE CERTAIN TRACTS CONVEYED TO ROBERT H. THERIOT BY DEED RECORDED IN VOLUME 13294, PAGE 1317 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 48.317 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

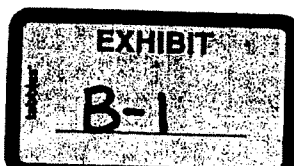
BEGINNING at a 1/2-inch iron rod found for a northwesterly corner of said called 1.00 acre Shaw tract, same being the southwest corner of that certain called 1.00 acre tract conveyed to Ross and Ramona Headfin by deed recorded in Volume 13175, Page 1199 of the Real Property Records of Travis County, Texas, said iron rod also being in the east line of that certain called 537.332 acre tract conveyed to the Lower Colorado River Authority by deed recorded in Volume 526, Page 284 of the Deed Records of Travis County, Texas;

THENCE S 63°00'14" E along the common line between said 1.00 acre Shaw tract and 1.00 acre Headfin tract a distance of 502.14 feet to a 1/2-inch iron rod found for the northeast corner of said 1.00 acre Shaw tract, same being the southeast corner of said 1.00 acre Headfin tract;

THENCE N 27°38'16" E along the common line between the aforementioned Theriot tracts and said 1.00 acre Headfin tract, and that certain called 1.00 acre tract conveyed to Stephanie Bradley by deed recorded in Volume 13244, Page 1391 and that certain called 1.00 acre tract conveyed to Jeremy Gaffney by deed recorded in Document No. 2004220087 of the Official Public Records of Travis County, Texas, a distance of 243.21 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;

THENCE leaving said common line, easterly and southerly crossing said Theriot tracts the following thirty-six (36) courses:

1. S 18°58'56" E a distance of 98.64 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
2. S 04°11'19" E a distance of 409.34 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
3. S 50°26'53" E a distance of 67.97 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;



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4. N 42°07'09" E a distance of 266.71 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
5. N 89°07'00" E a distance of 62.16 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
6. S 22°17'24" E a distance of 151.23 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
7. S 43°55'50" E a distance of 98.06 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
8. S 70°22'54" E a distance of 221.04 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the beginning of a non-tangent curve to the left;
9. a distance of 52.08 feet along the arc of said curve to the left having a central angle of 59°40'59", a radius of 50.00 feet and a chord which bears S 13°52'03" W a distance of 49.76 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the end of said curve;
10. S 12°05'07" W a distance of 115.98 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the beginning of a non-tangent curve to the right;
11. a distance of 165.27 feet along the arc of said curve to the right having a central angle of 18°02'11", a radius of 525.00 feet and a chord which bears S 66°50'12" E a distance of 164.59 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the end of said curve;
12. N 28°31'22" E a distance of 151.79 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
13. S 61°37'39" E a distance of 57.69 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
14. S 43°17'37" E a distance of 413.20 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
15. N 69°11'12" E a distance of 22.61 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the point of curvature of a curve to the right;

16. a distance of 142.09 feet along the arc of said curve to the right having a central angle of $42^{\circ}50'51''$, a radius of 190.00 feet and a chord which bears $S\ 89^{\circ}23'23''\ E$ a distance of 138.80 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for the end of said curve;
17. $N\ 34^{\circ}07'26''\ W$ a distance of 105.23 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
18. $N\ 57^{\circ}43'28''\ E$ a distance of 132.56 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
19. $S\ 82^{\circ}19'43''\ E$ a distance of 174.56 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
20. $S\ 25^{\circ}07'43''\ E$ a distance of 130.18 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
21. $S\ 02^{\circ}11'52''\ W$ a distance of 161.37 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
22. $S\ 49^{\circ}12'12''\ W$ a distance of 65.19 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
23. $S\ 09^{\circ}28'53''\ W$ a distance of 113.62 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
24. $N\ 72^{\circ}19'35''\ W$ a distance of 115.41 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for the beginning of a non-tangent curve to the right;
25. a distance of 91.26 feet along the arc of said curve to the right having a central angle of $27^{\circ}31'13''$, a radius of 190.00 feet and a chord which bears $S\ 41^{\circ}21'38''\ W$ a distance of 90.39 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for the point of reverse curvature between said curve and a curve to the left;
26. a distance of 80.27 feet along the arc of said curve to the left having a central angle of $41^{\circ}48'36''$, a radius of 110.00 feet and a chord which bears $S\ 34^{\circ}12'57''\ W$ a distance of 78.50 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for the point of reverse curvature between said curve and a curve to the right;
27. a distance of 145.21 feet along the arc of said curve to the right having a central angle of $28^{\circ}41'24''$, a radius of 290.00 feet and a chord which bears $S\ 27^{\circ}39'21''\ W$ a distance of 143.70 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for the point of tangency of said curve;

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28. S 42°00'03" W a distance of 141.88 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of curvature of a curve to the right;
29. a distance of 246.91 feet along the arc of said curve to the right having a central angle of 74°27'21", a radius of 190.00 feet and a chord which bears S 79°13'43" W a distance of 229.90 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of tangency of said curve;
30. N 63°32'36" W a distance of 68.72 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of curvature of a curve to the left;
31. a distance of 160.07 feet along the arc of said curve to the left having a central angle of 65°30'39", a radius of 140.00 feet and a chord which bears S 83°42'04" W a distance of 151.49 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of compound curvature between said curve and another curve to the left;
32. a distance of 21.75 feet along the arc of said curve to the left having a central angle of 83°03'56", a radius of 15.00 feet and a chord which bears S 10°02'53" W a distance of 19.89 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of reverse curvature between said curve and a curve to the left;
33. a distance of 215.66 feet along the arc of said curve to the right having a central angle of 164°44'57", a radius of 75.00 feet and a chord which bears S 50°53'13" W a distance of 148.67 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of reverse curvature between said curve and a curve to the right;
34. a distance of 22.37 feet along the arc of said curve to the left having a central angle of 85°26'49", a radius of 15.00 feet and a chord which bears N 89°27'43" W a distance of 20.35 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of compound curvature between said curve and another curve to the left;
35. a distance of 177.79 feet along the arc of said curve to the left having a central angle of 73°54'06", a radius of 137.84 feet and a chord which bears S 10°51'50" W a distance of 165.72 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the end of said curve;

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36. S 76°27'34" E a distance of 64.99 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner in the curving north line of Oasis Bluff Drive (80' ROW);

THENCE a distance of 172.43 feet along the arc of said curve to the left having a central angle of 18°17'42", a radius of 540.00 feet and a chord which bears S 40°22'35" W a distance of 171.70 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the end of said curve;

THENCE leaving said north line of Oasis Bluff Drive, northerly and westerly recrossing said Theriot tracts the following twenty-seven (27) courses:

1. N 12°23'07" W a distance of 115.53 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the point of curvature of a curve to the right;
2. a distance of 290.65 feet along the arc of said curve to the right having a central angle of 76°26'44", a radius of 217.84 feet and a chord which bears N 12°43'22" E a distance of 269.57 feet to the point of tangency of said curve;
3. N 50°56'45" E a distance of 171.87 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the point of curvature of a curve to the right;
4. a distance of 251.54 feet along the arc of said curve to the right having a central angle of 65°30'39", a radius of 220.00 feet and a chord which bears N 83°42'04" E a distance of 238.06 feet to the point of tangency of said curve;
5. S 63°32'36" E a distance of 68.72 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the point of curvature of a curve to the left;
6. a distance of 142.95 feet along the arc of said curve to the left having a central angle of 74°27'21", a radius of 110.00 feet and a chord which bears N 79°13'43" E a distance of 133.10 feet to the point of tangency of said curve;
7. N 42°00'03" E a distance of 141.88 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the point of curvature of a curve to the left;
8. a distance of 105.15 feet along the arc of said curve to the left having a central angle of 28°41'24", a radius of 210.00 feet and a chord which bears N 27°39'21" E a distance of 104.06 feet to the point of tangency of reverse curvature between said curve and a curve to the right;

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9. a distance of 138.65 feet along the arc of said curve to the right having a central angle of $41^{\circ}48'36''$, a radius of 190.00 feet and a chord which bears $N\ 34^{\circ}12'57''\ E$ a distance of 135.59 feet to the point of reverse curvature between said curve and a curve to the left;
10. a distance of 273.67 feet along the arc of said curve to the left having a central angle of $142^{\circ}32'44''$, a radius of 110.00 feet and a chord which bears $N\ 16^{\circ}09'07''\ W$ a distance of 208.35 feet to the end of said curve;
11. $S\ 25^{\circ}30'27''\ E$ a distance of 123.28 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
12. $S\ 61^{\circ}50'38''\ W$ a distance of 164.33 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
13. $S\ 29^{\circ}00'40''\ W$ a distance of 166.71 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
14. $S\ 54^{\circ}32'04''\ W$ a distance of 116.28 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
15. $S\ 71^{\circ}58'06''\ W$ a distance of 101.46 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
16. $S\ 81^{\circ}20'07''\ W$ a distance of 92.83 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
17. $N\ 80^{\circ}55'29''\ W$ a distance of 181.43 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
18. $N\ 07^{\circ}46'06''\ W$ a distance of 50.02 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
19. $N\ 80^{\circ}39'37''\ W$ a distance of 50.02 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
20. $S\ 07^{\circ}46'06''\ W$ a distance of 50.02 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
21. $N\ 80^{\circ}39'37''\ W$ a distance of 279.17 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
22. $S\ 52^{\circ}31'36''\ W$ a distance of 153.74 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
23. $S\ 25^{\circ}59'24''\ E$ a distance of 151.99 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;

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24. N 09°11'26" E a distance of 29.68 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the beginning of a non-tangent curve to the right;
25. a distance of 7.82 feet along the arc of said curve to the right having a central angle of 10°47'33", a radius of 41.50 feet and a chord which bears N 58°33'57" W a distance of 7.81 feet to the point of reverse curvature between said curve and a curve to the left;
26. a distance of 19.53 feet along the arc of said curve to the left having a central angle of 74°36'15", a radius of 15.00 feet and a chord which bears S 89°31'42" W a distance of 18.18 feet to the point of tangency of said curve;
27. S 52°13'34" W a distance of 139.25 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner in the east line of Oasis Pass, a private road;

THENCE N 23°59'29" W along said east line of Oasis Pass a distance of 27.80 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;

THENCE leaving said east line of Oasis Pass northeasterly and northwesterly through said Theriot tracts the following five (5) courses:

1. N 52°13'34" E a distance of 132.63 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the point of curvature of a curve to the left;
2. a distance of 19.53 feet along the arc of said curve to the left having a central angle of 74°36'15", a radius of 15.00 feet and a chord which bears N 14°55'27" E a distance of 18.18 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the point of reverse curvature between said curve and a curve to the right;
3. a distance of 15.16 feet along the arc of said curve to the right having a central angle of 20°56'07", a radius of 41.50 feet and a chord which bears N 11°54'37" W a distance of 15.08 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the end of said curve;
4. N 87°17'00" E a distance of 27.89 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
5. N 37°50'08" W a distance of 111.09 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner in the south line of Bullick Bluff (private street);

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THENCE easterly along said south line of Bullick Bluff the following two (2) courses:

1. N 61°30'40" E a distance of 51.82 feet to a 1/2-inch iron rod found for corner;
2. N 32°47'26" E a distance of 40.35 feet to a 1/2-inch iron rod found for corner in the north line of the aforementioned Comanche Pass Section 2 unrecorded subdivision;

THENCE S 82°27'40" W along said north line a distance of 584.00 feet to a 1/2-inch iron rod found for the southeast corner of the aforementioned 12.00 acre tract, said iron rod also being in the north line of Comanche Trail (60' ROW);

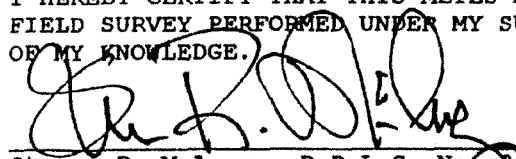
THENCE westerly along said north line of Comanche Trail the following five (5) courses:

1. N 03°12'10" E a distance of 105.02 feet to a 1/2-inch iron rod found for the point of curvature of a curve to the left;
2. a distance of 189.58 feet along the arc of said curve to the left having a central angle of 58°12'27", a radius of 186.61 feet and a chord which bears N 29°18'46" W a distance of 181.53 feet to a 1/2-inch iron rod found for the point of tangency of said curve;
3. N 57°23'32" W a distance of 193.67 feet to a 1/2-inch iron rod found for the point of curvature of a curve to the left;
4. a distance of 197.42 feet along the arc of said curve to the left having a central angle of 39°00'39", a radius of 289.95 feet and a chord which bears N 76°46'37" W a distance of 193.63 feet to a 1/2-inch iron rod found for the point of tangency of said curve;
5. S 83°24'32" W a distance of 102.74 feet to a 1/2-inch iron rod found for the southwest corner of the aforementioned 12.00 acre tract, same being the southeast corner of the aforementioned 537.332 acre Lower Colorado River Authority tract;

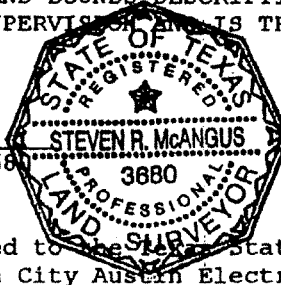
THENCE N 27°37'34" E along the common line between said 12.00 acre tract and 537.332 acre tract a distance of 990.95 feet to the POINT OF BEGINNING of the herein described tract and containing 48.317 acres of land, more or less.

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I HEREBY CERTIFY THAT THIS METES AND BOUNDS DESCRIPTION WAS PREPARED FROM A
FIELD SURVEY PERFORMED UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST
OF MY KNOWLEDGE.



Steven R. McAngus, R.P.L.S. No. 3680



(The bearings herein are referenced to the State Plane Coordinate System,
Central Zone (NAD 1927) based upon City Austin Electric Utility Department
Monument No. EUD-108.

EXHIBIT "A"

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METES AND BOUNDS DESCRIPTION

BEING 52.323 ACRES OF LAND LOCATED IN THE S. BULLOCK SURVEY NO. 76, ABSTRACT 2601, THE S. BULLOCK SURVEY NO. 76, ABSTRACT NO. 2624, AND THE D.J. RIORDAN SURVEY NO. 76, ABSTRACT 2618, IN TRAVIS COUNTY, TEXAS; SAME BEING A PORTION OF THAT CERTAIN 312.76 ACRE REMAINDER OF THOSE CERTAIN TRACTS CONVEYED TO ROBERT H. THERIOT BY DEED RECORDED IN VOLUME 13294, PAGE 1317 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS AND A PORTION OF THAT CERTAIN CALLED 15.994 ACRE TRACT CONVEYED TO ROBERT H. THERIOT BY DEED RECORDED IN VOLUME 13396, PAGE 16 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 52.323 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING FOR REFERENCE at a 1/2-inch iron rod found for the northwest corner of that certain 42.00 acre tract conveyed to John Joseph and John M. Joseph by deed recorded in Volume 11175, Page 150 of the Real Property Records of Travis County, Texas, same being the northeast corner of that certain called 393.0463 acre tract conveyed to the Comanche Canyon Conservation Fund by deed recorded in Volume 11960, Page 1072 of the Real Property Records of Travis County, Texas;

THENCE N 62°23'00" W along the common line between said 393.0463 acre tract and the herein described tract a distance of 3,036.54 feet to a 1/2-inch iron rod set for the POINT OF BEGINNING of the herein described 52.323 acre tract;

THENCE N 62°23'00" W continuing along said common line a distance of 78.42 feet to a 1/2-inch iron rod found for corner;

THENCE N 62°19'28" W continuing along said common line a distance of 2,278.29 feet to a calculated point in the record location of the original bank of the Colorado River as now inundated by the waters of Lake Travis, same being the southwest corner of the herein described tract;

THENCE N 12°55'26" W along said original bank of the Colorado River a distance of 209.15 feet to a point for the southwest corner of that certain 4.28 acre tract conveyed to the City of Austin by deed recorded in Volume 9678, Page 521 of the Real Property Records of Travis County, Texas;

THENCE easterly along the common line between said 4.28 acre tract and 312.76 acre tract the following four (4) courses:

1. S 89°52'51" E a distance of 291.04 feet to a record point as inundated by the waters of Lake Travis;
2. N 09°42'43" W a distance of 31.61 feet to a record point as inundated by the waters of Lake Travis;
3. N 14°34'59" E a distance of 32.00 feet to a record point as inundated by the waters of Lake Travis;



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4. N 63°16'14" E a distance of 32.48 feet to a record point as inundated by the waters of Lake Travis for the southwest corner of Lot 3, Oasis Bluff, a subdivision of record in Volume 93, Page 13 of the Plat Records of Travis County, Texas;

THENCE S 62°22'23" E along the common line between said Lot 3 and 16.00 acre tract, at a distance of 947.80 feet passing a 1/2-inch iron rod found for the southeast corner of said Lot 3, continuing for a total distance of 1,001.43 feet to a point for corner in the approximate centerline of asphalt of Comanche Trail as shown on subdivision plat of said Oasis Bluff;

THENCE leaving said common line, northerly, easterly and southerly through the interior of said 312.76 acre remainder tract the following sixty-three (63) courses:

1. S 61°51'12" E a distance of 173.25 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
2. N 26°35'35" E a distance of 201.03 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
3. N 30°08'57" W a distance of 101.05 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
4. N 15°35'34" W a distance of 114.85 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
5. N 05°23'44" W a distance of 114.62 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
6. N 07°33'23" E a distance of 107.57 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
7. N 20°43'41" E a distance of 49.89 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
8. N 12°06'27" E a distance of 243.13 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
9. N 18°17'23" E a distance of 24.68 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
10. S 32°07'00" E a distance of 384.16 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
11. S 10°30'51" E a distance of 29.16 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;

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12. S 03°30'20" E a distance of 163.88 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
13. S 11°44'02" E a distance of 21.09 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
14. S 22°13'33" E a distance of 57.78 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
15. S 48°24'56" E a distance of 55.53 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
16. S 82°01'24" E a distance of 29.36 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
17. N 87°26'04" E a distance of 63.87 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
18. N 50°19'30" E a distance of 140.53 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
19. N 18°37'22" E a distance of 143.07 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
20. N 04°40'31" W a distance of 163.58 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
21. N 09°45'49" E a distance of 197.99 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
22. N 21°25'37" E a distance of 145.08 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
23. N 46°42'39" E a distance of 123.68 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
24. S 43°44'16" E a distance of 107.31 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
25. N 73°49'06" E a distance of 105.37 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
26. N 57°00'56" E a distance of 52.04 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
27. N 33°52'41" W a distance of 55.84 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;

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28. N 56°01'40" E a distance of 44.88 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
29. N 23°23'18" E a distance of 51.37 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
30. N 61°20'38" E a distance of 74.66 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
31. N 02°54'21" E a distance of 248.57 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
32. N 29°40'00" E a distance of 206.04 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
33. N 59°42'33" E a distance of 231.25 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
34. S 67°16'02" E a distance of 214.49 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
35. S 08°06'04" E a distance of 268.05 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
36. S 29°03'42" E a distance of 217.34 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
37. S 20°08'37" W a distance of 156.28 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
38. S 45°05'39" W a distance of 116.60 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
39. S 71°39'11" W a distance of 237.34 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
40. S 47°55'54" W a distance of 120.08 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
41. S 35°14'28" W a distance of 302.29 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
42. S 05°28'06" E a distance of 170.20 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
43. S 27°06'33" W a distance of 153.36 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;

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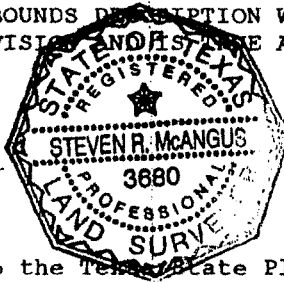
44. S 38°32'35" W a distance of 124.07 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
45. S 54°09'53" W a distance of 306.42 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
46. S 26°23'13" W a distance of 29.43 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
47. S 69°42'09" W a distance of 60.89 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
48. S 32°18'14" W a distance of 89.85 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
49. S 08°01'32" W a distance of 70.12 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
50. S 24°38'02" E a distance of 17.59 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
51. S 17°06'50" W a distance of 45.72 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
52. S 00°28'49" E a distance of 40.13 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
53. S 38°57'07" E a distance of 48.00 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
54. S 76°14'22" E a distance of 114.13 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
55. N 71°10'35" E a distance of 67.20 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
56. S 51°45'39" E a distance of 88.91 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
57. S 29°58'27" E a distance of 51.65 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
58. S 16°33'12" W a distance of 53.72 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
59. S 13°59'11" E a distance of 93.23 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;

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60. S 48°54'04" E a distance of 74.38 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
61. S 07°01'09" E a distance of 100.30 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
62. S 12°50'29" E a distance of 84.96 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
63. S 82°36'25" W a distance of 203.63 to the POINT OF BEGINNING of the herein described tract and containing 52.323 acres of land, more or less.

I HEREBY CERTIFY THAT THIS METES AND BOUNDS DESCRIPTION WAS PREPARED FROM A FIELD SURVEY PERFORMED UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.


Steven R. McAngus, R.P.L.S. No. 3680



(The bearings herein are referenced to the Texas State Plane Coordinate System, Central Zone (NAD 1927) based upon City Austin Electric Utility Department Monument No. EUD-108.

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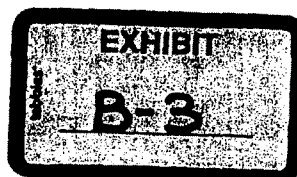
BEING 12.232 ACRES OF LAND LOCATED IN THE S. BULLOCK SURVEY NO. 76, ABSTRACT NO. 2624, AND THE S. BULLOCK SURVEY NO. 76, ABSTRACT NO. 2601, IN TRAVIS COUNTY, TEXAS; SAME BEING A PORTION OF THAT CERTAIN 312.76 ACRE REMAINDER OF THOSE CERTAIN TRACTS CONVEYED TO ROBERT H. THERIOT BY DEED RECORDED IN VOLUME 13294, PAGE 1317 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 12.232 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING FOR REFERENCE at a 1/2-inch iron rod found for the most northerly corner of that certain 30.00 acre tract conveyed to Brownstone Gallery, Inc. by deed recorded in Document No. 2002076479 of the Official Public Records of Travis County, Texas, same being an exterior ell corner of said 312.76 acre remainder tract, said iron rod also being in the south line of Bullick Hollow Drive (ROW Varies);

THENCE N 45°19'14" W along said south line of Bullick Hollow Drive a distance of 89.51 feet to a 1/2-inch iron rod found for the POINT OF BEGINNING of the herein described 12.232 acre tract;

THENCE leaving said south line, westerly through the interior of said 312.76 acre remainder tract the following sixteen (16) courses:

1. S 82°41'20" W a distance of 148.07 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
2. N 69°40'56" W a distance of 553.04 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
3. N 68°18'39" W a distance of 324.03 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
4. N 34°49'06" W a distance of 220.71 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
5. N 54°07'11" W a distance of 220.31 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
6. N 48°59'58" W a distance of 47.66 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
7. N 53°14'42" W a distance of 128.93 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the beginning of a non-tangent curve to the right;



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8. a distance of 501.44 feet along the arc of said curve to the right having a central angle of $60^{\circ}38'55''$, a radius of 473.72 feet and a chord which bears $N 40^{\circ}53'02'' W$ a distance of 478.36 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for the end of said curve.
9. $N 30^{\circ}41'12'' W$ a distance of 305.64 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
10. $N 28^{\circ}57'31'' W$ a distance of 70.11 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
11. $N 13^{\circ}06'37'' W$ a distance of 62.61 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
12. $N 06^{\circ}05'19'' W$ a distance of 51.73 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
13. $N 09^{\circ}09'11'' E$ a distance of 57.15 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
14. $N 18^{\circ}38'14'' E$ a distance of 62.17 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
15. $N 31^{\circ}42'06'' E$ a distance of 45.37 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
16. $N 44^{\circ}38'08'' E$ a distance of 185.01 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner in the aforementioned south line of Bullick Hollow Drive;

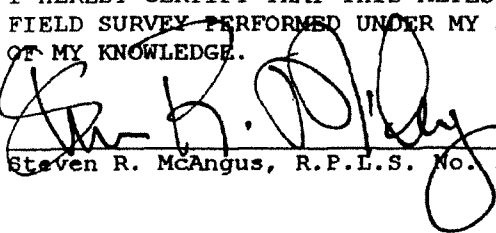
THENCE along said south line of Bullick Hollow Drive the following fourteen (14) courses:

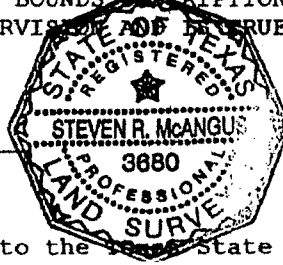
1. a distance of 58.09 feet along the arc of a curve to the right having central angle of $03^{\circ}02'09''$, a radius of 1,096.26 feet and a chord which bears $S 38^{\circ}27'38'' E$ a distance of 58.08 feet to a $\frac{1}{2}$ -inch iron pipe found for the point of compound curvature between said curve and another curve to the right;
2. a distance of 72.92 feet along the arc of a curve to the right having a central angle of $06^{\circ}03'42''$, a radius of 689.29 feet and a chord which bears $S 33^{\circ}12'50'' E$ a distance of 72.89 feet to a $\frac{1}{2}$ -inch iron rod found for the point of compound curvature between said curve and another curve to the right;

3. a distance of 354.62 feet along the arc of a curve to the right having a central angle of $13^{\circ}40'56''$, a radius of 1,485.01 feet and a chord which bears S $23^{\circ}05'01''$ E a distance of 353.78 feet to a 1/2-inch iron pipe found for the end of said curve;
4. S $16^{\circ}17'07''$ E a distance of 171.24 feet to a 1/2-inch iron rod found for the point of curvature of a curve to the left;
5. a distance of 341.61 feet along the arc of said curve to the left having a central angle of $15^{\circ}14'02''$, a radius of 1,284.83 feet and a chord which bears S $23^{\circ}59'10''$ E a distance of 340.60 feet to a 1/2-inch iron rod found for the end of said curve;
6. S $42^{\circ}12'37''$ E a distance of 105.49 feet to a 1/2-inch iron rod found for the beginning of a curve to the left;
7. a distance of 209.04 feet along the arc of a curve to the left having a central angle of $11^{\circ}01'57''$, a radius of 995.37 feet and a chord which bears S $45^{\circ}56'40''$ E a distance of 208.65 feet to a 1/2-inch iron pipe found for the end of said curve;
8. S $51^{\circ}09'41''$ E a distance of 238.99 feet to a 1/2-inch iron rod found for corner;
9. S $60^{\circ}38'30''$ E a distance of 255.66 feet to a 1/2-inch iron rod found for corner;
10. S $71^{\circ}53'42''$ E a distance of 93.11 feet to a 1/2-inch iron rod found for corner;
11. S $65^{\circ}00'13''$ E a distance of 394.55 feet to a 1/2-inch iron rod found for corner;
12. S $51^{\circ}43'37''$ E a distance of 124.10 feet to a 1/2-inch iron rod found for corner;
13. S $58^{\circ}00'50''$ E a distance of 183.54 feet to a 1/2-inch iron rod found for corner;
14. S $45^{\circ}19'14''$ E a distance of 28.23 feet to the POINT OF BEGINNING of the herein described tract and containing 12.232 acres of land, more or less.

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I HEREBY CERTIFY THAT THIS METES AND BOUNDS DESCRIPTION WAS PREPARED FROM A
FIELD SURVEY PERFORMED UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST
OF MY KNOWLEDGE.


Steven R. McAngus, R.P.L.S. No. 3680



(The bearings herein are referenced to the 1983 State Plane Coordinate System,
Central Zone (NAD 1927) based upon City Austin Electric Utility Department
Monument No. EUD-108.

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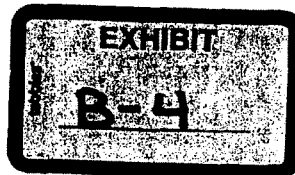
BEING 20.358 ACRES OF LAND LOCATED IN THE S. BULLOCK SURVEY NO. 76, ABSTRACT NO. 2624, AND THE D.J. RIORDAN SURVEY NO. 76, ABSTRACT 2618, IN TRAVIS COUNTY, TEXAS; SAME BEING A PORTION OF THAT CERTAIN 312.76 ACRE REMAINDER OF THOSE CERTAIN TRACTS CONVEYED TO ROBERT H. THERIOT BY DEED RECORDED IN VOLUME 13294, PAGE 1317 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 20.358 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch iron rod found for the most northerly northwest corner of that certain 42.00 acre tract conveyed to John Joseph and John M. Joseph by deed recorded in Volume 11175, Page 150 of the Real Property Records of Travis County, Texas, same being an exterior ell corner of said 312.76 acre remainder tract, said iron rod also being in the south line of that certain called 34.69 acre tract conveyed to Montandon Community Property Management Trust, et al by deed recorded in Document No. 2000130093 of the Official Public Records of Travis County, Texas;

THENCE S 26°58'03" W along the common line between said 42.00 acre tract and 312.76 acre tract a distance of 465.79 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;

THENCE leaving said common line, westerly, northerly and easterly through the interior of said 312.76 acre remainder tract the following twenty-three (23) courses:

1. N 84°30'50" W a distance of 223.47 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
2. N 74°37'13" W a distance of 195.38 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
3. N 41°53'41" W a distance of 140.23 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
4. N 01°31'33" E a distance of 138.41 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
5. N 45°44'01" W a distance of 121.85 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
6. N 75°56'57" W a distance of 84.58 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
7. N 84°50'40" W a distance of 21.73 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;



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8. N 23°29'48" W a distance of 320.60 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
9. N 24°19'12" E a distance of 307.36 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
10. N 04°34'10" E a distance of 147.32 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
11. N 30°18'16" W a distance of 173.43 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
12. N 17°06'50" E a distance of 108.99 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
13. N 59°12'54" E a distance of 99.92 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
14. S 84°09'20" E a distance of 85.27 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
15. S 26°33'30" E a distance of 145.72 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
16. S 62°29'14" E a distance of 63.76 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
17. S 18°29'28" E a distance of 105.76 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
18. S 72°34'53" E a distance of 65.97 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
19. N 31°42'11" E a distance of 134.93 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
20. S 81°25'02" E a distance of 130.86 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
21. S 35°16'59" E a distance of 360.56 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
22. S 24°44'39" W a distance of 107.84 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
23. S 20°46'36" E a distance of 56.50 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;

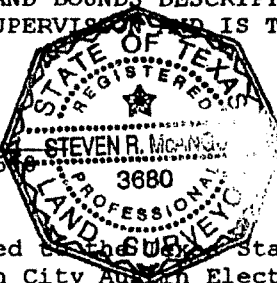
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24. S 27°12'49" W a distance of 266.00 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner in the west line of the aforementioned 34.69 acre tract;

THENCE S 61°47'45" E along the common line between said 34.69 acre tract and 312.76 acre tract a distance of 337.28 feet to the POINT OF BEGINNING of the herein described tract and containing 20.358 acres of land, more or less.

I HEREBY CERTIFY THAT THIS METES AND BOUNDS DESCRIPTION WAS PREPARED FROM A FIELD SURVEY PERFORMED UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.


Steven R. McAngus, R.P.L.S. No. 3680



(The bearings herein are referenced to the State Plane Coordinate System, Central Zone (NAD 1927) based upon City Austin Electric Utility Department Monument No. EUD-108.

METES AND BOUNDS DESCRIPTION

BEING 241.24 ACRES OF LAND LOCATED IN THE S. BULLOCK SURVEY NO. 76, ABSTRACT 2601, THE S. BULLOCK SURVEY NO. 76, ABSTRACT NO. 2624, AND THE D.J. RIORDAN SURVEY NO. 76, ABSTRACT 2618, IN TRAVIS COUNTY, TEXAS; SAME BEING A PORTION OF THAT CERTAIN 312.76 ACRE REMAINDER OF THOSE CERTAIN TRACTS CONVEYED TO ROBERT H. THERIOT BY DEED RECORDED IN VOLUME 13294, PAGE 1317 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 241.24 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch iron rod found for the northwest corner of that certain 42.00 acre tract conveyed to John Joseph and John M. Joseph by deed recorded in Volume 11175, Page 150 of the Real Property Records of Travis County, Texas, same being the northeast corner of that certain called 393.0463 acre tract conveyed to the Comanche Canyon Conservation Fund by deed recorded in Volume 11960, Page 1072 of the Real Property Records of Travis County, Texas;

THENCE N 62°23'00" W along the common line between said 393.0463 acre tract and the herein described tract a distance of 3,036.54 feet to a 1/2-inch iron rod set for corner;

THENCE leaving said common line, northerly, westerly and southerly through the interior of said 312.76 acre remainder tract the following fifty-four (54) courses:

1. N 82°36'25" E a distance of 203.63 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
2. N 12°50'29" E a distance of 84.96 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
3. N 07°01'09" W a distance of 100.30 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
4. N 48°54'04" W a distance of 74.38 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
5. N 13°54'11" W a distance of 93.23 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
6. N 16°33'12" E a distance of 53.72 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
7. N 29°58'27" W a distance of 51.65 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
8. N 51°45'39" W a distance of 88.91 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;



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9. S 71°10'35" W a distance of 67.20 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
10. N 76°14'22" W a distance of 114.13 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
11. N 38°57'07" W a distance of 48.00 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
12. N 00°28'49" W a distance of 40.13 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
13. N 17°06'50" E a distance of 45.72 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
14. N 24°38'02" W a distance of 17.59 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
15. N 08°01'32" E a distance of 70.12 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
16. N 32°18'14" E a distance of 89.85 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
17. N 69°42'09" E a distance of 60.89 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
18. N 26°23'13" E a distance of 29.43 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
19. N 54°09'53" E a distance of 306.42 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
20. N 38°32'35" E a distance of 124.07 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
21. N 27°06'33" E a distance of 153.36 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
22. N 05°28'06" W a distance of 170.20 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
23. N 35°14'28" E a distance of 302.29 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
24. N 47°55'54" E a distance of 120.08 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;

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25. N 71°39'11" E a distance of 237.34 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
26. N 45°05'39" E a distance of 116.60 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
27. N 20°08'37" E a distance of 156.28 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
28. N 29°03'42" W a distance of 217.34 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
29. N 08°06'04" W a distance of 268.05 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
30. N 67°16'02" W a distance of 214.49 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
31. S 59°42'33" W a distance of 231.25 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
32. S 29°40'00" W a distance of 206.04 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
33. S 02°54'21" W a distance of 248.57 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
34. S 61°20'38" W a distance of 74.66 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
35. S 23°23'18" W a distance of 51.37 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
36. S 56°01'40" W a distance of 44.88 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
37. S 33°52'41" E a distance of 55.84 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
38. S 57°00'56" W a distance of 52.04 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
39. S 73°49'06" W a distance of 105.37 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
40. N 43°44'16" W a distance of 107.31 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;

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41. S 46°42'39" W a distance of 123.68 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
42. S 21°25'37" W a distance of 145.08 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
43. S 09°45'49" W a distance of 197.99 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
44. S 04°04'31" E a distance of 163.58 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
45. S 18°37'22" W a distance of 143.07 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
46. S 50°19'13" W a distance of 140.53 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
47. S 87°26'04" W a distance of 63.87 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
48. N 82°01'24" W a distance of 29.36 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
49. N 48°24'56" W a distance of 55.53 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
50. N 22°16'33" W a distance of 57.78 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
51. N 11°44'02" W a distance of 21.09 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
52. N 03°30'20" W a distance of 163.88 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
53. N 10°30'51" W a distance of 29.16 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
54. N 32°07'00" W a distance of 384.16 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner in the west line of said 312.76 acre remainder, same being the east line of that certain 0.998 acre tract conveyed to the City of Austin by deed recorded in Volume 9678, Page 505 of the Deed Records of Travis County, Texas;

THENCE N 18°17'23" E along the common line between said 0.998 acre tract and the herein described tract a distance of 120.24 feet to the northeast corner of said 0.998 acre tract, same being the southeast corner of that certain 0.993 acre tract conveyed to the City of Austin by deed recorded in Volume 10710, Page 1142 of the Official Public Records of Travis County, Texas;

THENCE northerly along the common line between said 0.993 acre tract and the herein described tract the following two (2) courses:

1. N 25°14'21" W a distance of 302.61 feet to a 1/2-inch iron rod found for corner;
2. N 74°42'27" W a distance of 99.97 feet to a 1/2-inch iron rod found for corner in the aforementioned curving south line of Oasis Bluff Drive;

THENCE a distance of 158.16 feet along the arc of said curve to the right having a central angle of 19°42'00", a radius of 460.00 feet and a chord which bears N 25°02'57" E a distance of 157.38 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;

THENCE leaving said south line of Oasis Bluff Drive through the interior of said 312.76 acre remainder the following three (3) courses:

1. S 49°06'40" E a distance of 100.70 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
2. N 40°53'20" E a distance of 120.00 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
3. N 49°06'40" W a distance of 97.54 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner in the aforementioned curving south line of Oasis Bluff Drive;

THENCE easterly along said south line of Oasis Bluff Drive the following eight (8) courses:

1. a distance of 160.77 feet along the arc of a curve to the right having a central angle of 20°01'31", a radius of 460.00 feet and a chord which bears N 59°54'24" E a distance of 159.96 feet to a 1/2-inch iron found for the point of tangency of said curve;
2. N 69°55'39" E a distance of 991.16 feet to a 1/2-inch iron rod found for the point of curvature of a curve to the left;
3. a distance of 317.95 feet along the arc of a curve to the left having a central angle of 33°44'07", a radius of 540.00 feet and a chord which bears N 53°02'57" E a distance of 313.37 feet to a 1/2-inch iron rod set for the point of tangency of said curve;

4. N 36°11'17" E a distance of 115.74 feet to a 1/2-inch iron rod set for the point of curvature of a curve to the right;
5. a distance of 315.07 feet along the arc of a curve to the right having a central angle of 39°14'38", a radius of 460.00 feet and a chord which bears N 55°48'38" E a distance of 308.95 feet to a 1/2-inch iron rod set for the point of tangency of said curve;
6. N 75°27'46" E a distance of 158.38 feet to a 1/2-inch iron rod found for the point of curvature of a curve to the left;
7. a distance of 295.38 feet along the arc of a curve to the left having a central angle of 31°20'25", a radius of 540.00 feet and a chord which bears N 59°44'18" E a distance of 291.71 feet to a 1/2-inch iron rod found for the point of tangency of said curve;
8. N 44°05'05" E a distance of 56.09 feet to a 1/2-inch iron rod found in the southwest line of Bullick Hollow Drive (ROW Varies):

THENCE along said southwest line of Bullick Hollow Drive the following two (2) courses:

1. a distance of 223.57 feet along the arc of a curve to the left having a central angle of 14°21'49", a radius of 891.80 feet and a chord which bears S 59°41'15" E a distance of 222.98 feet to a 1/2-inch iron rod set for the point of reverse curvature between said curve to the left and a curve to the right;
2. a distance of 155.47 feet along the arc of a curve to the right having a central angle of 08°07'33", a radius of 1,096.26 feet and a chord which bears S 62°57'13" E a distance of 155.34 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;

THENCE leaving said southwest line of Bullick Hollow Drive through the interior of said 312.76 acre remainder the following three (3) courses:

1. S 36°44'36" W a distance of 394.41 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
2. S 53°15'24" E a distance of 149.77 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
3. N 36°44'36" E a distance of 398.90 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner in the aforementioned curving southwest line of Bullick Hollow Drive;

THENCE a distance of 211.90 feet along the arc of said curve to the right having a central angle of $11^{\circ}04'31''$, a radius of 1,096.26 and a chord which bears $S\ 45^{\circ}30'57''\ E$ a distance of 211.58 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;

THENCE leaving said southwest line of Bullick Hollow Drive, southerly and easterly through the interior of said 312.76 acre remainder tract the following sixteen (16) courses:

1. $S\ 44^{\circ}38'08''\ E$ a distance of 185.01 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
2. $S\ 31^{\circ}42'06''\ W$ a distance of 45.37 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
3. $S\ 18^{\circ}38'14''\ W$ a distance of 62.17 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
4. $S\ 09^{\circ}09'11''\ W$ a distance of 57.15 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
5. $S\ 06^{\circ}05'19''\ E$ a distance of 51.73 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
6. $S\ 13^{\circ}06'37''\ E$ a distance of 62.61 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
7. $S\ 28^{\circ}57'31''\ E$ a distance of 70.11 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
8. $S\ 30^{\circ}41'12''\ E$ a distance of 305.64 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for the beginning of a non-tangent curve to the left;
9. a distance of 501.44 feet along the arc of said curve to the left having a central angle of $60^{\circ}38'55''$, a radius of 473.72 feet and a chord which bears $S\ 40^{\circ}53'02''\ E$ a distance of 478.35 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for the end of said curve;
10. $S\ 53^{\circ}14'42''\ E$ a distance of 128.93 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
11. $S\ 48^{\circ}59'58''\ E$ a distance of 47.66 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;
12. $S\ 54^{\circ}07'11''\ E$ a distance of 220.32 feet to a $\frac{1}{2}$ -inch iron rod with cap stamped "McAngus Surveying" set for corner;

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13. S 34°49'06" E a distance of 220.71 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
14. S 68°18'39" E a distance of 324.03 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
15. S 69°40'56" E a distance of 553.04 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
16. N 82°41'20" E a distance of 148.07 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner in the aforementioned southwest line of Bullick Hollow Drive;

THENCE S 45°19'14" E along said southwest line of Bullick Hollow Drive a distance of 89.51 feet to a ½-inch rod found for the northwest corner of that certain 30.00 acre tract conveyed to Brownstone Gallery, Inc. by deed recorded in Document No. 2002076479 of the Official Public Records of Travis County, Texas;

THENCE westerly, southerly and easterly along the common line between said 30.00 acre tract and said 312.76 acre remainder tract the following four (4) courses:

1. S 67°07'21" W a distance of 219.34 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" found for corner;
2. N 67°03'50" W a distance of 1,011.45 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" found for corner;
3. S 21°56'54" W a distance of 747.07 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" found for corner;
4. S 68°03'06" E a distance of 1,660.03 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" found for corner in the easterly line of said 312.76 acre remainder tract, same being the westerly line of that certain 34.69 acre tract conveyed to Eda L. Montandon & Richard Buratti, trustees for the Montandon Community Property Management Trust by deed recorded in Document No. 2000130039 of the Official Public Records of Travis County, Texas;

THENCE S 27°12'49" W along the common line between said 34.69 acre tract and the herein described tract a distance of 472.30 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;

THENCE leaving said common line westerly, southerly and easterly through the interior of said 312.76 acre remainder tract the following twenty-four (24) courses:

1. N 20°46'36" W a distance of 56.50 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;

2. N 24°44'39" E a distance of 107.84 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
3. N 35°16'59" W a distance of 360.56 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
4. N 81°25'02" W a distance of 130.86 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
5. S 31°42'11" W a distance of 134.93 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
6. N 72°34'53" W a distance of 65.97 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
7. N 18°29'28" W a distance of 105.76 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
8. N 62°29'14" W a distance of 63.76 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
9. N 26°33'30" W a distance of 145.72 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
10. N 84°09'20" W a distance of 85.27 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
11. S 59°12'54" W a distance of 99.92 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
12. S 17°06'50" W a distance of 108.99 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
13. S 30°18'16" E a distance of 173.43 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
14. S 04°34'10" W a distance of 147.32 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
15. S 24°19'12" W a distance of 307.36 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
16. S 23°29'48" E a distance of 320.60 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
17. S 84°50'40" E a distance of 21.73 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;

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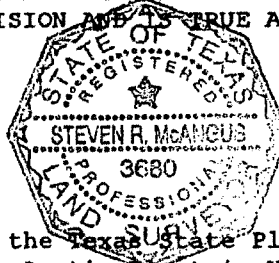
18. S 75°56'57" E a distance of 84.58 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
19. S 45°44'01" E a distance of 121.85 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
20. S 01°31'33" W a distance of 138.41 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
21. S 41°53'41" E a distance of 140.23 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
22. S 74°37'13" E a distance of 195.38 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
23. S 84°30'50" E a distance of 223.47 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner in the west line of the aforementioned 42.00 acre Joseph tract;

THENCE S 26°58'03" W along the common line between said 42.00 acre tract and the herein described tract a distance of 794.59 feet to a 1/2-inch iron rod found for corner;

THENCE N 62°23'09" W continuing along the common line between said 42.00 acre tract and the herein described tract a distance of 693.50 feet to the POINT OF BEGINNING of the herein described tract and containing 241.24 acres of land, more or less.

I HEREBY CERTIFY THAT THIS METES AND BOUNDS DESCRIPTION WAS PREPARED FROM A FIELD SURVEY PERFORMED UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.


Steven R. McAngus, R.P.L.S. No. 3680



(The bearings herein are referenced to the Texas State Plane Coordinate System, Central Zone (NAD 1927) based upon City Austin Electric Utility Department Monument No. EUD-108.

METES AND BOUNDS DESCRIPTION

BEING 30.00 ACRES OF LAND LOCATED IN THE S. BULLOCK SURVEY NO. 76, ABSTRACT 2601 AND THE S. BULLOCK SURVEY NO. 76, ABSTRACT 2624, IN TRAVIS COUNTY, TEXAS; SAID 30.00 ACRES BEING ALL THAT CERTAIN 30.00 ACRE TRACT CONVEYED TO BROWNSTONE GALLERY, INC. BY DEED RECORDED IN DOCUMENT NO. 2002076479 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 30.00 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch iron rod found for the northwest corner of that certain 34.690 acre tract conveyed to Eda Montandon & Richard Buratti as co-trustees of the Montandon Community Property Management Trust by deed recorded in Document No. 2000130093 of the Official Public Records of Travis County, Texas, same being the northeast corner of said 30.00 acre tract, said iron rod also being in the south line of Bullick Hollow Road (ROW Varies);

THENCE S 27°12'49" W along the common line between said 34.690 acre tract and 30.00 acre tract a distance of 761.33 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" found for the southeast corner of the herein described 30.00 acre tract, same being an exterior ell corner of that certain 312.76 acre remainder of those certain tracts conveyed to Robert H. Theriot by deed recorded in Volume 13294, Page 1317 of the Official Public Records of Travis County, Texas;

THENCE along the common line between said 312.76 acre remainder and the herein described 30.00 acre tract the following four (4) courses:

1. N 68°03'06" W a distance of 1,660.03 feet to a 1/2- inch iron rod with cap stamped "McAngus Surveying" found for corner;
2. N 21°56'54" E a distance of 747.07 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" found for corner;
3. S 67°03'50" E a distance of 1,011.45 feet to a 1/2- inch iron rod with cap stamped "McAngus Surveying" found for corner;
4. N 67°07'21" E a distance of 219.34 feet to a 1/2-inch iron rod found in the aforementioned south line of Bullick Hollow Road;

THENCE along said south line of Bullick Hollow Road the following three (3) courses:

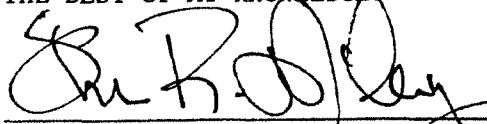
1. S 60°04'16" E a distance of 200.04 feet to a 1/2-inch iron rod found for the beginning of a non-tangent curve to the left;
2. a distance of 286.21 feet along the arc of a curve to the left having a central angle of 31°12'37", a radius of 525.42 feet and a chord which bears S 50°30'03" E a distance of 282.68 feet to a 1/2-inch iron rod found for the end of said curve;

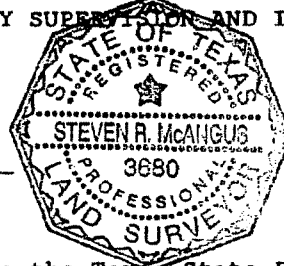


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3. S 60°13'20" E a distance of 96.30 feet to the POINT OF BEGINNING of the herein described tract and containing 30.00 acres of land, more or less.

I HEREBY CERTIFY THAT THIS METES AND BOUNDS DESCRIPTION WAS PREPARED FROM A SURVEY PERFORMED IN THE FIELD UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.


Steven R. McAngus, R.F.L.S. No. 3680



(The bearings herein are referenced to the Texas State Plane Coordinate System, Central Zone (NAD 1927) based upon City of Austin Electric Utility Department Monument No. EUD-108).

METES AND BOUNDS DESCRIPTION

BEING 34.91 ACRES OF LAND LOCATED IN THE S. BULLOCK SURVEY NO. 76, ABSTRACT 2601, THE S. BULLOCK SURVEY NO. 76, ABSTRACT NO. 2624, THE D.J. RIORDAN SURVEY NO. 76, ABSTRACT 2618, AND JAMES P. DUNLAP SURVEY NO. 594, ABSTRACT NO. 239, IN TRAVIS COUNTY, TEXAS; SAME BEING A PORTION OF A 89.52 ACRE REMAINDER OF THOSE CERTAIN TRACTS CONVEYED TO ROBERT H. THERIOT BY DEED RECORDED IN VOLUME 13294, PAGE 1317 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 34.91 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch iron rod found for a northwesterly corner of said 89.52 acre remainder, same being the northeasterly corner of that certain called 1.00 acre tract conveyed to Kin Shing Vincent Lee by deed recorded in Volume 12337, Page 537 of the Real Property Records of Travis County, Texas, said iron rod also being in the south line of that certain called 12.607 acre tract conveyed to Robert K. and Marcy L. Garriott by deed recorded in Document No. 2000073952 of the Office Public Records of Travis County, Texas;

THENCE easterly and northerly along the common line between said 12.607 acre tract and the herein described tract the following two (2) courses:

1. S 63°10'04" E a distance of 563.14 feet to a 1/2-inch iron rod found for corner;
2. N 27°06'52" E a distance of 324.25 feet to a 1/2-inch iron rod found for corner in the south line of that certain 124.547 acre tract conveyed to Travis County by deed recorded in Document No. 1999020211 of the Official Public Records of Travis County, Texas;

THENCE easterly along the common line between said 129.13 acre tract and the herein described tract the following two (2) courses:

1. S 61°58'21" E a distance of 200.87 feet to a 1/2-inch iron rod found for corner;
2. S 62°57'15" E a distance of 630.60 feet to a 1/2-inch iron rod found for the southeast corner of said 129.13 acre tract, same being the southwest corner of that certain 4.26 acre tract conveyed to Peter C. Strickland by deed recorded in Volume 11076, Page 733 of the Real Property Records of Travis County, Texas;

THENCE S 63°16'23" E along the common line between said 4.26 acre tract and a 1.65 acre tract conveyed to John K. Strickland by deed recorded in Volume 11076, Page 739 of the Real Property Records of Travis County, Texas and the herein described tract a distance of 355.83 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;



THENCE leaving said common line, southerly and easterly through the interior of said 89.52 acre the following two (2) courses:

1. S 26°38'31" W a distance of 403.44 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner;
2. S 63°25'35" E a distance of 771.36 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for corner in the curving west line of Oasis Bluff Drive (80' ROW);

THENCE southerly along said west line of Oasis Bluff Drive the following five (5) courses:

1. a distance of 288.14 feet along the arc of said curve to the right having a central angle of 30°34'20", a radius of 540.00 feet and a chord which bears S 51°28'27" W a distance of 284.73 feet to a 1/2-inch iron rod found for the end of said curve;
2. S 36°00'21" W a distance of 124.98 feet to a 1/2-inch iron rod found for the point of curvature of a curve to the right;
3. a distance of 270.96 feet along the arc of said curve to the right having a central angle of 33°44'58", a radius of 460.00 feet and a chord which bears S 53°05'33" W a distance of 267.06 feet to a 1/2-inch iron rod found for the point of tangency of said curve;
4. S 69°54'39" W a distance of 990.93 feet to a 1/2-inch iron rod found for the point of curvature of a curve to the left;
5. a distance of 192.55 feet along the arc of said curve to the left having a central angle of 20°25'49", a radius of 540.00 feet and a chord which bears S 59°44'21" W a distance of 191.53 feet to a 1/2-inch iron rod found for the point of tangency of said curve;

THENCE leaving said west line of Oasis Bluff Drive northerly and westerly through the interior of said 89.52 acre remainder the following thirty-six (36) courses:

1. N 76°27'34" W a distance of 64.99 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for the beginning of a non-tangent curve to the right;
2. a distance of 177.79 feet along the arc of said curve to the right having a central angle of 73°54'06", a radius of 137.84 feet and a chord which bears N 10°51'50" E a distance of 165.72 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of compound curvature between said curve and another curve to the right;

3. a distance of 22.37 feet along the arc of said curve to the right having a central angle of $85^{\circ}26'49''$, a radius of 15.00 feet and a chord which bears $S\ 89^{\circ}27'43''\ E$ a distance of 20.35 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of reverse curvature between said curve and a curve to the left;
4. a distance of 215.66 feet along the arc of said curve to the left having a central angle of $164^{\circ}44'57''$, a radius of 75.00 feet and a chord which bears $N\ 50^{\circ}53'13''\ E$ a distance of 148.67 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of reverse curvature between said curve and a curve to the right;
5. a distance of 21.75 feet along the arc of said curve to the right having a central angle of $83^{\circ}03'56''$, a radius of 15.00 feet and a chord which bears $N\ 10^{\circ}02'53''\ E$ a distance of 19.89 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of compound curvature between said curve and another curve to the right;
6. a distance of 160.07 feet along the arc of said curve to the right having a central angle of $65^{\circ}30'39''$, a radius of 140.00 feet and a chord which bears $N\ 83^{\circ}42'04''\ E$ a distance of 151.49 feet to a 1/2-inch iron rod found for the point of tangency of said curve;
7. $S\ 63^{\circ}32'36''\ E$ a distance of 68.72 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for the point of curvature of a curve to the left;
8. a distance of 246.91 feet along the arc of said curve to the left having a central angle of $74^{\circ}27'21''$, a radius of 190.00 feet and a chord which bears $N\ 79^{\circ}13'43''\ E$ a distance of 229.90 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of tangency of said curve;
9. $N\ 42^{\circ}00'03''\ E$ a distance of 141.88 feet to a 1/4-inch iron rod with cap stamped "McAngus Surveying" set for point of curvature of a curve to the left;
10. a distance of 177.79 feet along the arc of said curve to the left having a central angle of $73^{\circ}54'06''$, a radius of 137.84 feet and a chord which bears $N\ 10^{\circ}51'50''\ E$ a distance of 165.72 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of reverse curvature between said curve and a curve to the right;
11. a distance of 80.27 feet along the arc of said curve to the right having a central angle of $41^{\circ}48'36''$, a radius of 110.00 feet and a chord which bears $N\ 34^{\circ}12'57''\ E$ a distance of 78.50 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of reverse curvature between said curve and a curve to the left;

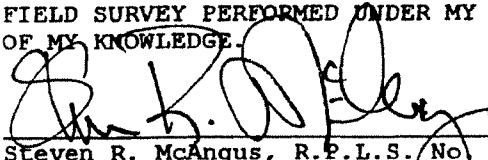
12. a distance of 91.26 feet along the arc of said curve to the left having a central angle of $27^{\circ}31'13''$, a radius of 190.00 feet and a chord which bears $N 41^{\circ}21'38'' E$ a distance of 90.39 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the end of said curve;
13. $S 72^{\circ}19'35'' E$ a distance of 115.41 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
14. $N 09^{\circ}28'53'' E$ a distance of 113.62 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
15. $N 49^{\circ}12'12'' E$ a distance of 65.19 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
16. $N 02^{\circ}11'52'' E$ a distance of 161.37 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
17. $N 25^{\circ}07'43'' W$ a distance of 130.18 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
18. $N 82^{\circ}19'43'' W$ a distance of 174.56 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
19. $S 57^{\circ}43'28'' W$ a distance of 132.56 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
20. $S 34^{\circ}07'26'' E$ a distance of 105.23 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the beginning of a non-tangent curve to the left;
21. a distance of 142.09 feet along the arc of said curve to the left having a central angle of $42^{\circ}50'51''$, a radius of 190.00 feet and a chord which bears $N 89^{\circ}23'23'' W$ a distance of 138.80 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of tangency of said curve;
22. $S 69^{\circ}11'12'' W$ a distance of 22.61 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
23. $N 43^{\circ}17'37'' W$ a distance of 413.20 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
24. $N 61^{\circ}37'39'' W$ a distance of 57.69 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;

25. S 28°31'22" W a distance of 151.79 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the beginning of a non-tangent curve to the left;
26. a distance of 165.27 feet along the arc of said curve to the left having a central angle of 18°02'11", a radius of 525.00 feet and a chord which bears N 66°50'12" W a distance of 164.59 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the end of said curve;
27. N 12°05'07" E a distance of 115.98 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the beginning of a non-tangent curve to the right;
28. a distance of 52.08 feet along the arc of said curve to the right having a central angle of 59°40'59", a radius of 50.00 feet and a chord which bears N 13°52'03" W a distance of 49.76 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the end of said curve;
29. N 70°22'54" W a distance of 222.60 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
30. N 43°55'50" W a distance of 98.06 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
31. N 22°17'24" W a distance of 151.23 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
32. S 89°07'00" W a distance of 62.16 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
33. S 42°07'09" W a distance of 266.71 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
34. N 50°26'53" W a distance of 67.97 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
35. N 04°11'19" W a distance of 409.34 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
36. N 18°58'56" W a distance of 98.64 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner in the east line of that certain called 1.00 acre tract conveyed to Cynthia J. Attwood by deed recorded in Volume 13262, Page 1376 of the Official Public Records of Travis County, Texas;

February 17, 2005
Job No. 97-108
(Parcel 3)
Page 6 of 6

THENCE N 27°38'16" E along the common line between said 1.00 acre tract and the herein described tract a distance of 104.25 feet to the POINT OF BEGINNING of the herein described tract and containing 34.91 acres of land, more or less.

I HEREBY CERTIFY THAT THIS METES AND BOUNDS DESCRIPTION WAS PREPARED FROM A FIELD SURVEY PERFORMED UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.


Steven R. McAngus, R.P.L.S. No. 3680



(The bearings herein are referenced to the Texas State Plane Coordinate System, Central Zone (NAD 1927) based upon City Austin Electric Utility Department Monument No. EUD-108.

METES AND BOUNDS DESCRIPTION

BEING 8.54 ACRES OF LAND LOCATED IN THE S. BULLOCK SURVEY NO. 76, ABSTRACT 2601, THE S. BULLOCK SURVEY NO. 76, ABSTRACT NO. 2624, AND THE D.J. RIORDAN SURVEY NO. 76, ABSTRACT 2618, IN TRAVIS COUNTY, TEXAS; SAME BEING A PORTION OF A 89.52 ACRE REMAINDER OF THOSE CERTAIN TRACTS CONVEYED TO ROBERT H. THERIOT BY DEED RECORDED IN VOLUME 13294, PAGE 1317 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 8.54 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING FOR REFERENCE at a 1/2-inch iron rod found for a northwesterly corner of that certain called 0.09 acre tract conveyed to W. Thad Gilliam by deed recorded in Volume 10781, Page 1882 of the Real Property Records of Travis County, Texas, same being an exterior ell corner of said 89.52 acre remainder, said iron rod also being in the east line of Oasis Pass (30' ROW);

THENCE N 13°22'43" W along said east line of Oasis Pass a distance of 60.46 feet to a 1/2-inch iron rod found for corner;

THENCE N 27°37'46" W continuing along said east line a distance of 17.12 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the POINT OF BEGINNING of the herein described 8.54 acre tract;

THENCE leaving said east line of Oasis Pass, northerly and easterly through the interior of said 89.52 acre remainder the following twenty-four (24) courses:

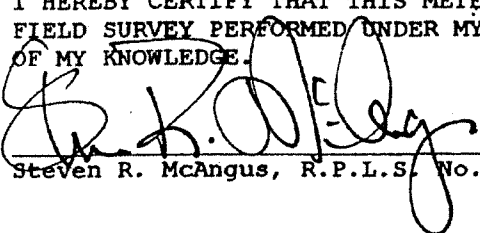
1. N 62°58'26" E a distance of 139.23 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
2. N 03°42'39" E a distance of 408.18 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
3. N 52°31'36" E a distance of 153.74 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
4. S 80°39'37" E a distance of 279.17 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
5. N 07°46'06" E a distance of 50.02 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
6. S 80°39'37" E a distance of 50.02 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
7. S 07°46'06" W a distance of 50.02 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;
8. S 80°55'29" E a distance of 181.43 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner;

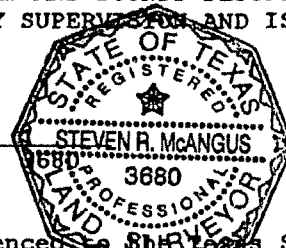


9. N 81°20'07" E a distance of 92.83 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
10. N 71°58'06" E a distance of 101.46 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
11. N 54°32'04" E a distance of 116.28 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
12. N 29°00'40" E a distance of 166.71 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
13. N 61°50'38" E a distance of 164.33 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for corner;
14. N 25°30'27" W a distance of 123.28 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the beginning of a non-tangent curve to the left;
15. a distance of 273.67 feet along the arc of said curve to the right having a central angle of 142°32'44", a radius of 110.00 feet and a chord which bears S 16°09'07" E a distance of 208.35 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the point of reverse curvature between said curve and a curve to the left;
16. a distance of 138.65 feet along the arc of said curve to the left having a central angle of 41°48'36", a radius of 190.00 feet and a chord which bears S 34°12'57" W a distance of 135.59 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the point of reverse curvature between said curve and a curve to the right;
17. a distance of 105.15 feet along the arc of said curve to the right having a central angle of 28°41'24", a radius of 210.00 feet and a chord which bears S 27°39'21" W a distance of 104.06 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the point of tangency of said curve;
18. S 42°00'03" W a distance of 141.88 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the point of curvature of a curve to the right;
19. a distance of 142.95 feet along the arc of said curve to the right having a central angle of 74°27'21", a radius of 110.00 feet and a chord which bears S 79°13'43" W a distance of 133.10 feet to a ½-inch iron rod with cap stamped "McAngus Surveying" set for the point of tangency of said curve;

20. N 63°32'36" W a distance of 68.72 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of curvature of a curve to the left;
 21. a distance of 251.54 feet along the arc of said curve to the left having a central angle of 65°30'39", a radius of 220.00 feet and a chord which bears S 83°42'04" W a distance of 238.06 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of tangency of said curve;
 22. S 50°56'45" W a distance of 171.87 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of curvature of a curve to the left;
 23. a distance of 290.65 feet along the arc of said curve to the left having a central angle of 76°26'44", a radius of 217.84 feet and a chord which bears S 12°42'22" W a distance of 269.57 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the point of tangency of said curve;
 24. S 76°27'34" E a distance of 64.99 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for corner in the curving north line of Oasis Bluff Drive (80' ROW);
- THENCE a distance of 34.82 feet along the arc of said curve to the left having a central angle of 03°41'40", a radius of 540.00 feet and a chord which bears S 29°22'54" W a distance of 34.81 feet to a 1/2-inch iron rod with cap stamped "McAngus Surveying" set for the end of said curve;
- THENCE S 77°37'09" W leaving said north line and crossing said 89.52 acre remainder a distance of 391.31 feet to the POINT OF BEGINNING of the herein described tract and containing 8.54 acres of land, more or less.

I HEREBY CERTIFY THAT THIS METES AND BOUNDS DESCRIPTION WAS PREPARED FROM A FIELD SURVEY PERFORMED UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.


Steven R. McAngus, R.P.L.S. No. 3680



(The bearings herein are referenced to the 1983 Texas State Plane Coordinate System, Central Zone (NAD 1927) based upon City of Austin Electric Utility Department Monument No. EUD-108.

METES AND BOUNDS DESCRIPTION

BEING 9.00 ACRES OF LAND LOCATED IN THE S. BULLOCK SURVEY NO. 76, ABSTRACT 2601, IN TRAVIS COUNTY, TEXAS; AND MORE PARTICULARLY BEING A PORTION OF THE 89.52 ACRE REMAINDER OF THOSE CERTAIN TRACTS CONVEYED TO ROBERT H. THERIOT BY DEED RECORDED IN VOLUME 13294, PAGE 1317 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 9.00 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch iron rod found for the intersection of the southwest line of Bullick Hollow Drive (ROW Varies) with the southeast line of Oasis Bluff Drive (80' ROW), same being the most easterly corner of said 89.52 acre remainder tract;

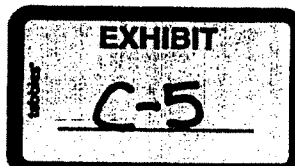
THENCE southwesterly along said southeast line of Oasis Bluff Drive the following four (4) courses:

1. S 44°00'45" W a distance of 55.41 feet to a 1/2-inch iron rod found for the point of curvature of a curve to the right;
2. a distance of 251.61 feet along the arc of said curve to the right having a central angle of 31°20'21", a radius of 460.00 feet and a chord which bears S 59°42'24" W a distance of 248.48 feet to a 1/2-inch iron rod found for the point of tangency of said curve;
3. S 75°21'39" W a distance of 158.95 feet to a 1/2-inch iron rod found for the point of curvature of a curve to the left;
4. a distance of 81.73 feet along the arc of said curve to the left having a central angle of 08°40'20", a radius of 540.00 feet and a chord which bears S 71°05'47" W a distance of 81.66 feet to a point for corner;

THENCE leaving said southeast line of Oasis Bluff Drive through the interior of said 89.52 acre remainder tract the following two (2) courses:

1. N 63°25'35" W a distance of 771.36 feet to a point for corner;
2. N 26°38'31" E a distance of 402.87 feet to a point for corner in the north line of said 89.52 acre remainder, same being the south line of that certain 1.65 acre tract conveyed to Peter C. Strickland by deed recorded in Volume 11076, Page 739 of the Real Property Records of Travis County, Texas;

THENCE S 63°18'22" E along the common line between said 89.52 acre remainder tract and said 1.65 acre tract and that certain 12.95 acre tract conveyed to Peter C. Strickland by deed recorded in Volume 5429, Page 1658 of the Deed Records of Travis County, Texas, and that certain 4.26 acre tract conveyed to Edwin Strickland III by deed recorded in Volume 11076, Page 730 of the Real Property Records of Travis County, Texas a distance of 978.12 feet to a 1/4-inch iron rod found for the southeast corner of said 4.26 acre tract;



December 15, 2004

Job No. 97-108

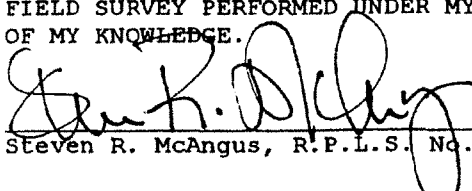
Page 2 of 2

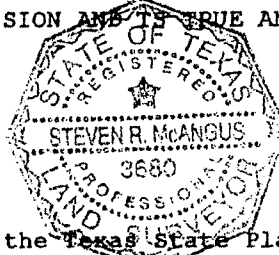
THENCE N 47°46'46" E continuing along the common line between said 89.52 acre remainder tract and said 4.26 acre tract a distance of 67.71 feet to a 1/2-inch iron rod found for corner in the aforementioned southwest line of Bullick Hollow Drive;

THENCE southeasterly along said southwest line of Bullick Hollow Drive the following two (2) courses:

1. S 41°53'29" E a distance of 39.91 feet to the point of curvature of a curve to the left;
2. a distance of 65.54 feet along the arc of said curve to the left having a central angle of 04°12'38", a radius of 891.08 feet and a chord which bears S 40°36'39" E a distance of 65.52 feet to the POINT OF BEGINNING of the herein described tract and containing 9.00 acres of land, more or less.

I HEREBY CERTIFY THAT THIS METES AND BOUNDS DESCRIPTION WAS PREPARED FROM A FIELD SURVEY PERFORMED UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.


Steven R. McAngus, R.P.L.S. No. 3680



(The bearings herein are referenced to the Texas State Plane Coordinate System, Central Zone (NAD 1927) based upon City Austin Electric Utility Department Monument No. EUD-108.

**Comanche Canyon Ranch
LUE Summary**

| Area | Land Use | Units | LUE/Unit | Water LUE | Wastewater LUE |
|-------------------|-------------------|--------|----------|--------------|----------------|
| Area 1 | | | | | |
| | Single Family | 99 | 1 | 99 | 99 |
| | Subtotal | | | 99 | 99 |
| Area 2 | | | | | |
| | Single Family | 30 | 1 | 30 | 30 |
| | Condominium | 24 | 0.7 | 16.8 | 16.8 |
| | Commercial/Office | 25,000 | 0.332 | 8.3 | 8.3 |
| | Retail | 40,000 | 0.6 | 24 | 24 |
| | Subtotal | | | 79.1 | 79.1 |
| Area 3 | | | | | |
| | Single Family | 2 | 1 | 2 | 2 |
| | Condominium | 40 | 0.7 | 28 | 28 |
| | Town Home | 24 | 1 | 24 | 24 |
| | Subtotal | | | 54 | 54 |
| Area 4 | | | | | |
| | Single Family | 21 | 1 | 21 | 0 |
| | Subtotal | | | 21 | 0 |
| Oasis | 2" Meter | 2 | 8 | | 16 |
| Treasury | 5/8" Meter | 1 | 1 | | 1 |
| Office/Wharehouse | 5/8" Meter | 1 | 1 | | 1 |
| Total | | | | 253.1 | 250.1 |

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2005 Jun 17 12:00 PM 2005107955

HAYWOODK \$146.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS



CODE 47



WD

2008007873

20 PGS

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS THAT:
COUNTY OF TRAVIS §

DHD VENTURES, LLC, a North Carolina limited liability company (collectively, "**Grantor**"), for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL AND CONVEY unto CITY OF AUSTIN, a Texas home rule municipality located in Travis, Williamson and Hays Counties, having an address as set forth below ("**Grantee**"), those certain tracts of land, together with all improvements situated thereon, located in Travis County, Texas, and being more particularly described on **EXHIBITS A-1, A-2 and A-3** attached hereto and made a part hereof (the "**Subject Property**"), together with Grantor's interest in any and all appurtenances belonging or appertaining thereto, including without limitation, (i) appurtenant easements or rights-of-way serving or otherwise appurtenant to the Subject Property (ii) any and all rights of ingress and egress to and from the Subject Property; (iii) any and all mineral and/or royalty rights, reservations and interests; (iv) any and all rights and interests to the present or future use of wastewater, wastewater capacity, drainage, water or other utility facilities, including without limitation, all reservations, commitments or letters covering any use of such utilities or capacity in the future, whether now owned or hereafter acquired; (v) any and all leases covering any portion of the Subject Property; (vi) any and all roads, streets, alleys and ways (open or proposed) affecting, crossing, fronting or bounding the Subject Property, including, without limitation, any awards made or to be made relating thereto including, without limitation, any unpaid awards or damages payable by reason of damages thereto or by reason of a widening of or changing of the grade with respect to the same; (vii) any and all air rights relating to the Subject Property; and (viii) any and all reversionary interests in and to the Subject Property (collectively, "**Appurtenances**") to the extent, and only to the extent, that the Appurtenances are appurtenant to and benefit the Subject Property and are assignable. The Subject Property and such Appurtenances assigned hereunder are collectively referred to herein as the "**Property**."

This conveyance is expressly made subject to those certain matters affecting title to the Property that are set forth on **EXHIBIT B** attached hereto and made a part hereof, to the extent and only to the extent such matters are valid and subsisting and affect the Property as of the date hereof (the "**Permitted Exceptions**").

With regards to any and all easements previously granted directly to Grantee and covering any part of the Property, including but not limited to those Permitted Exceptions described in Items 6, 7, 11 and 12 of **EXHIBIT B** attached hereto, Grantor and Grantee hereby expressly

RETURN TO:

PROMINENT TITLE
3101 Bee Caves Suite 290
Austin, Texas 78746

HOU:2765061.5

GF# 0706705M

Parties' Initials:
Grantor  / Grantee 

acknowledge, stipulate and agree that the doctrine of merger shall not apply to such Permitted Exceptions and that Grantee's rights under such easements shall remain in effect separately from the title to the Property conveyed in this Deed, even though the underlying fee ownership of the Property, or any parts thereof, and such easements are now or hereafter vested in one party or entity.

GRANTOR IS CONVEYING THE PROPERTY AND GRANTEE IS PURCHASING THE PROPERTY "AS IS", "WHERE IS", AND "WITH ALL FAULTS" AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, EXCEPT FOR THE SPECIAL WARRANTY OF TITLE EXPRESSLY SET FORTH HEREIN. GRANTEE ACKNOWLEDGES THAT GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO: (A) THE NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE ACREAGE OF THE PROPERTY, THE DRAINAGE OF STORM WATER ONTO OR FROM THE PROPERTY, THE CONDITION OF THE SOILS LOCATED WITHIN THE PROPERTY, THE PRESENCE OR EXISTENCE OF ANY FAULTS WITHIN THE PROPERTY OR ANY OTHER MATTERS RELATED TO THE GEOLOGY OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR ANY SURROUNDING AREAS, INCLUDING WITHOUT LIMITATION, THE PRESENCE OR EXISTENCE OF HAZARDOUS MATERIALS OR SUBSTANCES; (B) THE AVAILABILITY OF WATER OR WATER RIGHTS WITH RESPECT TO THE PROPERTY; (C) THE AVAILABILITY OF UTILITIES TO THE PROPERTY OR THE EXISTENCE OR AVAILABILITY OF UTILITY COMMITMENTS TO SERVE THE PROPERTY; (D) WHETHER ANY PORTION OF THE PROPERTY LIES WITHIN ANY FLOOD PLAIN, FLOOD WAY, FLOOD PRONE AREA OR SPECIAL FLOOD HAZARD AREA; (E) THE STATUS OF ANY RIGHTS OF ACCESS TO THE PROPERTY, WHETHER BY PRIVATE EASEMENTS, PUBLIC ROADS OR OTHERWISE; (F) THE VALUE OF THE PROPERTY OR THE ANTICIPATED INCOME TO BE DERIVED FROM THE PROPERTY; (G) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, THE STATUS OF GOVERNMENTAL APPROVALS WITH RESPECT TO THE PROPERTY, THE ANTICIPATED DENSITIES WHICH MAY BE OBTAINED IN CONNECTION WITH THE DEVELOPMENT OF THE PROPERTY, OR ANY OTHER SIMILAR MATTERS; (H) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (I) THE PLANNING, DESIGN OR ENGINEERING OF ANY IMPROVEMENTS LOCATED UPON OR WITHIN THE PROPERTY; (J) ANY MATTERS RELATED TO THE CONSTRUCTION OF ANY IMPROVEMENTS LOCATED UPON OR WITHIN THE PROPERTY, INCLUDING WITHOUT LIMITATION, THE QUALITY OF ANY LABOR OR MATERIALS INCORPORATED THEREIN (EXCLUDING MECHANICS' LIENS CAUSED BY GRANTOR'S ACTIONS); (K) THE EXISTENCE OF ANY DEFECTS (LATENT OR PATENT) OR THE STATE OF REPAIR OR LACK OF REPAIR OF ANY IMPROVEMENTS LOCATED UPON OR WITHIN THE PROPERTY; OR (L) ANY OTHER MATTERS WITH RESPECT TO THE PROPERTY OR THE AREA IN WHICH THE PROPERTY IS

LOCATED. GRANTEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PREPARED BY THIRD PARTIES PROVIDED TO GRANTEE BY GRANTOR WITH RESPECT TO THE PROPERTY HAS NOT BEEN INDEPENDENTLY INVESTIGATED OR VERIFIED BY GRANTOR; THAT GRANTOR IS MAKING NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION; AND THAT GRANTOR IS NOT, AND SHALL NOT BE, LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, REPORTS, SURVEYS OR OTHER INFORMATION OF ANY KIND OR NATURE PERTAINING TO THE PROPERTY OR THE OPERATION THEREOF FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT, OR OTHER PERSON.

TO HAVE AND TO HOLD the Property unto Grantee and Grantee's successors and assigns forever, and each entity constituting Grantor, as a divisible, and not joint, warranty and limited as set forth below, does hereby bind itself and its successors and assigns to WARRANT AND FOREVER DEFEND, all and singular, the Subject Property (but not the Appurtenances, as expressly set forth herein) unto Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, subject however, to the Permitted Exceptions, all zoning laws, regulations and ordinances of municipal and other governmental authorities, if any, affecting the Property, and all matters otherwise expressly set forth herein. Grantor is hereby granting and conveying its right, title and interest in the Appurtenances, if any, without warranty of any kind, whether statutory, express or implied.

Grantor warrants payment of all ad valorem taxes on the Property for 2007 and all prior years.

[Remainder of this page intentionally left blank; signature page follows.]

Grantor  Parties' Initials:
/Grantee 

EXECUTED as of the date of the acknowledgment set forth below; to be effective, however, for all purposes, as of January 15, 2008.

GRANTOR:

DHD VENTURES, LLC
a North Carolina limited liability company

By: [Signature]
John Joseph, Jr.,
Managing Member

GRANTEE:

CITY OF AUSTIN

By: [Signature]
Rudy Garza
Assistant City Manager

Approved as to form:

[Signature]
Kathryn Mullen,
Assistant City Attorney

GRANTEE'S ADDRESS:

City of Austin
Public Works-
P.O. Box 1088
505 Barton Springs Rd., Suite 1350
Austin, TX 78767-8839
Attn: Junie Marie Plummer,
Real Estate Services Division

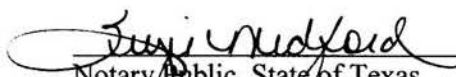
After recording, return to:

Cassie B. Stinson
Andrews Kurth LLP
111 Congress, Ste. 1700
Austin, TX 78701

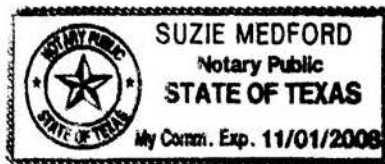
THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on January 15, 2008, by John Joseph, Jr., Managing Member of DHD VENTURES, LLC, a North Carolina limited liability company, on behalf of said company.


Notary Public, State of Texas

(NOTARY SEAL)



THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on January 15, 2008, by Rudy Garza, Assistant City Manager of City of Austin, a Texas home-rule municipality, on behalf of said municipality.


Notary Public, State of Texas

(NOTARY SEAL)



**EXHIBIT A-1
(Tract 1)**

40.43 Acres
John E. & John W. Joseph, Trustees

Travis County, Texas
C&B Job No. 050841002.205.4005

DESCRIPTION

BEING A 40.43 TRACT OF LAND SITUATED IN THE LOUIS FRITZ SURVEY NUMBER 291, ABSTRACT NUMBER 280 AND THE M.W. RIORDAN SURVEY NUMBER 74, ABSTRACT NUMBER 2629 IN TRAVIS COUNTY, TEXAS, BEING ALL OF THE REMAINDER OF THAT 42.00 ACRE TRACT OF LAND AS DESCRIBED IN A DEED TO JOHN JOSEPH & JOHN M. JOSEPH, TRUSTEES, RECORDED IN VOLUME 9483, PAGE 726, REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS (R.P.R.T.C.T.). SAID 40.43 ACRE TRACT BEING MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 3/4-inch iron pipe found for the southeast corner of a call 0.8697 acre tract described in a deed to MCPMT, Ltd., as recorded in Document No. 2003087287 and Document No. 2003087288, Official Public Records of Travis county, Texas, (O.P.R.T.C.T.) and to Daphene Clarke, recorded in Volume 13249, Page 2981 (R.P.R.T.C.T.), being the northeast corner of the said 42.00 acre tract and being in the west right-of-way line of Ranch to Market Road 620 (R.M. 620); for the northeast corner of the herein described tract;

THENCE with said west right-of-way line common with the east line of the said 42.00 acre tract for the following two (2) courses and distances:

1. **S 22°33'55" W** for a distance of **398.88** feet to a 1-inch iron rod found for the Point of Curvature of a non-tangent curve to the left,
2. Along said non-tangent curve to the left, passing through a central angle of **12°05'15"** to a 1-inch iron rod found for the Point of Non-tangency, said curve having a radius of **1479.26** feet, an arc length of **312.08** feet, and a long chord bearing **S 16°29'56" W** for a distance of **311.50** feet,

THENCE with the west line of a called 1.581 acre tract (Parcel 52A) to the State of Texas, described in Cause No. 2244 recorded under Document No. 1999071544 (O.P.R.T.C.T.), common with the east line of the remainder of said 42.00 acre tract for the following five (5) courses and distances:

1. **S 33°22'59" W** for a distance of **324.42** feet to a 1-inch iron rod found for angle point,
2. **S 51°40'01" W** for a distance of **275.20** feet to a 1/2-inch iron rod found for angle point,
3. **S 63°39'43" W** for a distance of **286.08** feet to a 1/2-inch iron rod with cap found for angle point,
4. **S 68°39'23" W** for a distance of **399.90** feet to a cotton gin spindle set for angle point,
5. **S 69°23'24" W** for a distance of **273.29** feet to a 1/2-inch iron rod with cap found for the southeast corner of the said 42.00 acre tract, and of the herein described tract,

40.43 Acres
John E. & John W. Joseph, Trustees

Travis County, Texas
C&B Job No. 050841002.205.4005

THENCE with the south line of the said 42.00 acre tract, common with the north line of a called 1751.865 acre tract described in a deed to the City of Austin recorded in Volume 11848, Page 1718 (R.P.R.T.C.T.), **N 62°28'52" W** for a distance of **49.82** feet to a 3/4 inch iron pipe found for the southwest corner of the said 42.00 acre tract, also being an easterly corner of a call 393.1037 acre tract described in a deed to The Commanche Trail Conservation Fund, recorded in Volume 11960, Page 1074 (R.P.R.T.C.T.), same being the southwest corner of the herein described tract;

THENCE with the southwest line of the said 42.00 acre tract common with a northeast line of the said 393.1037 acre tract, **N 20°25'32" W** for a distance of **1140.76** feet to a 1/2-inch iron rod found on a southerly line of a call 273.933 acre tract described in a deed to Robert H. Theriot, recorded in Volume 13294, Page 1317 (R.P.R.T.C.T.), being a corner of the said 393.1037 acre tract and being the west corner of the said 42.00 acre tract, and of the herein described tract;

THENCE with the southerly line of the said 273.933 acre tract common with a northerly line of the said 42.00 acre tract, **S 62°20'58" E** for a distance of **693.55** feet to an "X" found scribed in rock for the southeast corner of the said 273.933 acre tract, being an interior ell corner of the said 42.00 acre tract and of the herein described tract;

THENCE with the west line of the said 42.00 acre tract, common with the east line of the said 273.933 acre tract, **N 26°59'52" E** passing at a distance of 794.50 feet, and to the left 0.48 feet, a 1/2-inch iron rod with cap stamped "McAngus" found, for a total distance of **1210.75** feet to a 1/2-inch iron rod with cap found for the southwest corner of a Cellular Antenna Lease Site, recorded in Volume 9382, Page 661 (R.P.R.T.C.T.), for an exterior ell corner of the herein described tract, from which a 3/4 inch iron pipe found on the south line of a 34.85 acre tract described in a deed to MCPMT, Ltd. recorded under Document No. 2003087287 (O.P.R.T.C.T.), bears **N 26°59'10" E**, a distance of 50.01 feet, said iron pipe being called in said Volume 11175, Page 150 (R.P.R.T.C.T.), as marking the north corner of the said Louis Fritz Survey and the east corner of the D.J. Riordan Survey No. 76, Abstract 2618, and being on the south line of the Alex Dunlap Survey No. 805, Abstract No. 224;

THENCE with the south line of the said Cellular Antenna Lease Site common with a northerly line of the said 42.00 acre tract, **S 61°48'00" E** for a distance of **50.02** feet to a 1/2-inch iron rod found for the southeast corner of said Lease Site, being an interior ell corner of the said 42.00 acre tract and of the herein described tract;

THENCE with the east line of said Lease Site, common with the west line of the said 42.00 acre tract, **N 26°59'05" E** for a distance of **49.97** feet to a 1/2-inch iron rod found on the south line of the said 34.85 acre tract for the northeast corner of said Lease Site, being the northwest corner of the said 42.00 acre tract and of the herein described tract;

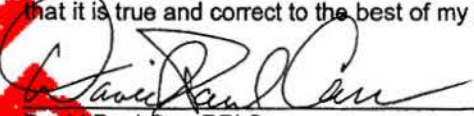
THENCE with the south line of the said 34.85 acre tract and the said 0.8697 acre tract, common with the north line of the said 42.00 acre tract, **S 61°47'49" E** for a distance of **830.77** feet to the **POINT OF BEGINNING** and containing 40.43 acres of land, more or less.

40.43 Acres
John E. & John W. Joseph, Trustees

Travis County, Texas
C&B Job No. 050841002.205.4005

Bearing Basis: The Texas Coordinate System Central Zone NAD 83

I David Paul Carr a duly Registered Professional Land Surveyor in the State of Texas do hereby certify that the foregoing description is based on a on the ground survey performed by Carter & Burgess in April of 2006 under my direction and supervision and that it is true and correct to the best of my belief.


David Paul Carr RPLS
Texas Registered Professional Land Surveyor
No. 3997



12/21/07
Date

FIELD NOTES REVIEWED
By JOHN MOORE Date 1-15-2008
Engineering Support Section
Department of Public Works
and Transportation

EXHIBIT A-2 (Tract 2)

36.20 Acres
MCPMT, LTD. et Al.
PD06-052

Travis County, Texas

DESCRIPTION

BEING A 36.20 ACRE TRACT OF LAND SITUATED IN THE ALEXANDER DUNLAP SURVEY NUMBER 805, ABSTRACT NUMBER 224 IN TRAVIS COUNTY, TEXAS, BEING ALL OF THE REMAINDER OF THAT 34.85 ACRE TRACT OF LAND AS DESCRIBED IN A DEED TO MCPMT, LTD., (TRACT 3), 99% INTEREST IN UNDIVIDED 1/2 INTEREST, RECORDED IN DOCUMENT NO. 2003087287 AND 1% INTEREST IN UNDIVIDED 1/2 INTEREST RECORDED IN DOCUMENT NO. 2003087288, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND TO DAPHENE H. SCHULZE, TRUSTEE, UNDIVIDED 1/2 INTEREST, BY CAUSE NO. 11580 PROBATE COURT OF TRAVIS COUNTY, TEXAS AND RECORDED IN VOLUME 9335, PAGE 128 REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, ALL OF THAT 0.8697 ACRE TRACT OF LAND AS DESCRIBED IN A DEED TO MCPMT, LTD., (TRACT 6) 99% INTEREST IN UNDIVIDED 1/2 INTEREST, RECORDED IN DOCUMENT NO. 2003087287 AND 1% INTEREST IN UNDIVIDED 1/2 INTEREST IN DOCUMENT NO. 2003087288, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND TO DAPHENE CLARKE, UNDIVIDED 1/2 INTEREST, RECORDED IN VOLUME 13249, PAGE 2981 REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, ALL OF THAT 0.50 ACRE TRACT OF LAND AS DESCRIBED IN A DEED TO MCPMT, LTD. (TRACT 2) 99% INTEREST RECORDED IN DOCUMENT NO. 2003087287 AND 1% INTEREST IN DOCUMENT NO. 2003087288, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND UNDIVIDED 1/2 INTEREST OF A 20 FOOT ROADWAY AS DESCRIBED IN A DEED TO MONTANDON COMMUNITY PROPERTY MANAGEMENT TRUST, RECORDED IN VOLUME 12273, PAGE 97, REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, SAID 36.20 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 3/4 inch iron pipe found on the southeast corner of said 0.8697 acre tract, being the northeast corner of that 42.00 acre tract of land as described in a deed to John E. & John M. Joseph, trustees, recorded in Volume 11175, Page 150, Real Property Records of Travis County, Texas and being the west right-of-way line of Ranch to Market Road 620 (R.M. 620); for the southeast corner of the herein described tract;

THENCE, leaving the said west right-of-way line of R.M. 620, with the south lines of said 0.8697 acre tract and said 34.85 acre tract common with the north lines of said 42.00 acre tract, a Cellular Antenna Lease Site, recorded in Volume 9382, Page 661, Real Property Records of Travis County, Texas, and of a call 273.933 acre tract described in a deed to Robert H. Theriot, recorded in Volume 13294, Page 1317, Real Property Records of Travis County, Texas **N 61°47'43" W**, passing at a distance of 176.84 feet the southwest corner of said 0.8697 acre tract, from which a 3/4 inch iron rod found bears **N 20°17'27" E**, a distance of 0.21 feet, and from which a PK nail with shiner found bears **N 25°02'22" E** a distance of 1.75 feet, passing at a distance of 830.77 feet a 1/2 inch iron rod found at the northeast corner of said Cellular Antenna Site Lease, passing at a distance of 880.78 feet a 3/4 inch iron pipe found at the northwest corner of said Cellular Antenna Lease Site, in all a total distance of 1218.10 feet to a 1/2 inch iron rod found at the interior ell corner of said 273.933 acre tract, southwest corner of said 34.85 acre tract, and of the herein described tract;

THENCE, with the west line of said 34.85 acre tract common with the east lines of said 273.933 acre tract and of a call 30.00 acre tract as described in a deed to Brownstone Gallery, Inc. recorded in Document No. 2002076479, Official Public Records of Travis County, Texas, **N 27°11'12" E**, passing at a distance of 266.11 feet an iron rod found with cap stamped McAngus, passing at a distance of 738.34 feet and to the left 0.30 feet an iron rod found with cap stamped McAngus for the southeast corner of said 30.00 acre tract, passing at a distance of 1499.80 feet a 1/2 inch iron rod found for the northeast corner of said 30.00 acre tract, in all a total distance of 1512.51 feet to a iron rod found with cap stamped C-A RPLS#2988 in the the

36.20 Acres
MCPMT, LTD. et. Al.
PD06-052

Travis County, Texas

south right-of-way line of Bullick Hollow, and being the northwest corner of said 34.85 acre tract, and of the herein described tract;

THENCE, with the north line of said 34.85 acre tract common with the said south right-of-way line of Bullick Hollow, the following two (2) courses:

1. S 66°06'34" E, a distance of 321.24 feet to a iron rod found with cap stamped C-A RPLS#2988;
2. S 55°17'19" E, a distance of 107.66 feet to a 5/8 inch iron rod found;

THENCE, with the south line of a call 0.16 acre tract, same being the south right-of-way line of Bullick Hollow as described in a deed to Travis County recorded in Volume 12949, Page 1296, Real Property Records of Travis County, Texas, the following two (2) courses:

1. S 50°49'21" E, a distance of 294.84 feet to a iron rod set with cap stamped Carter Burgess;
2. S 58°44'13" E, a distance of 220.44 feet to a 5/8 inch iron rod found in the west line of that call 0.96 acre tract as described in a deed to Hal H. Bell, recorded in Volume 2457, Page 522, Deed Records of Travis County, Texas, being the southeast corner of the said 0.16 acre tract and the northeast corner of the herein described tract;

THENCE, with a easterly line of said 34.85 acre tract common with the west line of said 0.96 acre tract, S 23°25'05" W, a distance of 192.03 feet to a 5/8 inch iron rod found, at an exterior ell corner of said 34.85 acre tract, being the southwest corner of said 0.96 acre tract, the northwest corner of Lot 1, Block A, of Speedy Stop 209, a subdivision, recorded in Document No. 200300329, Official Public Records of Travis County, Texas, and also being the northeast corner of that 0.088 acre tract (Tract 2) as described in a deed to Michael G. Haggerty, recorded in Volume 12203, Page 1595, Real Property Records of Travis County, Texas;

THENCE, with a easterly line of said 34.85 acre tract common with the northerly, westerly and southerly line of said 0.088 acre tract, the following five (5) courses:

1. N 48°43'59" W, a distance of 5.55 feet to a 5/8 inch iron rod found;
2. S 29°41'47" W, a distance of 178.37 feet to a 3/4 inch iron rod found;
3. N 62°11'07" W, a distance of 10.33 feet to a 5/8 inch iron rod found;
4. S 36°34'07" W, a distance of 21.83 feet to a 3/4 inch iron rod found and;
5. S 49°43'48" E, a distance of 26.30 feet to a 3/4 inch iron pipe found, at an exterior ell corner of said 34.85 acre tract, and also being the northwest corner of a call 1.028 acre tract as described in a deed to River City Real Estate, PLLC, recorded in Volume 13282, Page 2552, Real Property Records of Travis County, Texas;

THENCE, with a easterly line of said 34.85 acre tract common with the west line of said 1.028 acre tract, S 23°41'25" W, a distance of 208.49 feet to a 5/8 inch iron rod found, being an angle point of said 34.85 acre tract, being the southwest corner of said 1.028 acre tract and also being the northwest corner of a call 0.970 acre tract as described in a deed to Tracy Collins, recorded in Document No. 2005108470, Official Public Records of Travis County, Texas;

36.20 Acres
MCPMT, LTD. et. Al.
PD06-052

Travis County, Texas

THENCE, with a easterly line of said 34.85 acre tract common with the west line of said 0.970 acre tract, **S 23°01'37" W**, a distance of **210.69** feet to a 1/2 inch iron rod found, being the southwest corner of said 0.970 acre tract and also being the northwest corner of said 20 foot roadway;

THENCE, with the north line of said 20 foot roadway common with the south line of said 0.970 acre tract, **S 46°47'04" E**, a distance of **205.54** feet to a calculated point being the southeast corner of said 0.970 acre tract, and also being the said west right-of-way line R.M. 620, from which a 1/2 inch iron rod found bears **S 46°47'04" E**, a distance of **0.28** feet, and from which a TxDOT Type II monument found bears distance of **215.57** feet along the arc of a curve to the right, having a central angle of **04°14'15"**, a radius of **2914.79** feet and a chord bearing **N 27°18'58" E**, a distance of **215.52** feet;

THENCE, with the west right-of-way line of R.M. 620 and the arc of a curve to the left, an arc distance of **21.33** feet, having a central angle of **00°25'09"**, a radius of **2914.79** feet and a chord bearing **S 24°58'16" W**, a distance of **21.33** feet to a 1/2 inch iron rod found at the northeast corner of said 0.50 acre tract and being on the south line of said 20 foot roadway;

THENCE, with the east line of said 0.50 acre tract, **S 25°19'51" W**, a distance of **109.07** feet to a iron rod set with cap stamped Carter Burgess, at the southeast corner of said 0.50 acre tract being a southerly line of said 34.85 acre tract;

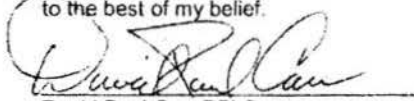
THENCE, with said southerly line of the 34.85 acre tract, **S 46°52'42" E** a distance of **3.30** feet to 1/2 inch iron rod found on the arc of a curve to the left on the said west right-of-way line of R.M. 620 and being a east line of said 34.85 acre tract;

THENCE, with the west right-of-way line R.M. 620, common with the east lines of said 34.85 acre tract and said 0.8697 acre tract, the following two (2) courses:

1. With the said arc of the curve to the left, an arc distance of **14.33** feet, having a central angle of **00°16'54"**, a radius of **2914.79** feet and a chord bearing **S 22°28'22" W**, a distance of **14.33** feet;
2. **S 22°27'56" W**, passing at a distance of **235.53** feet the northeast corner of said 0.8697, and also being an exterior ell corner of said 34.85 acre tract, in all a total distance of **446.76** feet to the **POINT OF BEGINNING** and containing **36.20** acres of land, more or less.

Bearing Basis: The Texas Coordinate System Central Zone Nad 83

I David Paul Carr a duly Registered Professional Land Surveyor in the State of Texas do hereby certify that the foregoing description is based on a on the ground survey performed by Carter & Burgess in September of 2006 under my direction and supervision and that it is true and correct to the best of my belief.


David Paul Carr RPLS
Texas Registered Professional Land Surveyor
No. 3997



Aug 7, 2006
Date

FIELD NOTES REVIEWED
by *John Moore* date *1-15-2008*
Engineering Support Section
Department of Public Works
and Transportation



MACIAS & ASSOCIATES, L.P.
LAND SURVEYORS

MCPMT, LTD, AND
DAPHENE H. SCHULZE, TRUSTEE
To
CITY OF AUSTIN
(Save & Except Tract)
January 14, 2008

LEGAL DESCRIPTION

DESCRIPTION OF A 4.200 ACRE (182,942 SQUARE FOOT) TRACT OF LAND OUT OF THE ALEXANDER DUNLAP SURVEY NO. 805, ABSTRACT NO. 224, TRAVIS COUNTY, TEXAS, BEING OUT OF A 34.85 ACRE TRACT REFERRED TO AS "TRACT 3" IN TWO GENERAL WARRANTY DEEDS DATED MARCH 26, 2003 TO MCPMT, LTD., 99% INTEREST IN AN UNDIVIDED 1/2 INTEREST RECORDED IN DOCUMENT NO. 2003087287 AND 1% INTEREST IN AN UNDIVIDED 1/2 INTEREST RECORDED IN DOCUMENT NO. 2003087288, AND TO DAPHENE H. SCHULZE, TRUSTEE, AN UNDIVIDED 1/2 INTEREST BY CAUSE NO. 11580, PROBATE COURT RECORDS OF TRAVIS COUNTY, TEXAS, RECORDED IN VOLUME 9335, PAGE 128, REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 4.200 ACRE (182,942 SQUARE FOOT) TRACT AS SHOWN ON THE ACCOMPANYING SKETCH, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod with plastic cap stamped "CA INC RPLS #2988" found having Texas State Plane Coordinate (Central Zone, NAD83(CORS), U.S. Feet, Combined Scale Factor 1.00011) values of N=10,119,929.31, E=3,077,071.15, on the south right-of-way line of Bullick Hollow Road, a varying width right-of-way, at the northwest corner of said 34.85 acre tract, for the northwest corner of this tract;

THENCE, Southeasterly, with the south right-of-way line of Bullick Hollow Road and the north line of said 34.85 acre tract, the following three (3) courses:

- 1) S 66°05'48" E, a distance of 321.30 feet to a 1/2" iron rod with plastic cap stamped "CA INC RPLS #2988" found for an angle point;
- 2) S 55°19'51" E, a distance of 107.67 feet to a 5/8" iron rod found for an angle point;
- 3) S 50°47'47" E, a distance of 125.23 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set on the east line of a 100-foot wide electric transmission and distribution line easement recorded in Volume 1793, Page 392, Deed Records of Travis County, Texas, for the northeast corner of this tract, from said point, a 5/8" iron rod found at the northeast corner of said 34.85 acre tract, bears S 50°47'47" E, 169.50 feet, and S 58°42'39" E, 220.36 feet;

4.200 Acres (182,942 Square Feet)

Page 1 of 4

31808-1.doc

THENCE, across said 34.85 acre tract, the following five (5) courses:

- 1) S 68°17'24" W, across said 100-foot wide electric transmission and distribution line easement, a distance of 129.90 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set on the west line of said 100-foot wide electric transmission and distribution line easement, for an angle point;
- 2) S 59°54'48" W, a distance of 97.08 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set for an angle point;
- 3) S 16°55'48" W, a distance of 141.23 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set for an angle point;
- 4) N 54°04'31" W, a distance of 138.72 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set for an angle point;
- 5) S 82°28'40" W, a distance of 365.09 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set on the west line of said 34.85 acre tract and on the east line of a 30.000 acre tract described in a deed dated December 31, 2001 to Brownstone Gallery, Inc., recorded in Document No. 2002076479, Official Public Records of Travis County, Texas, for the southwest corner of this tract, from said point, a 1/2" iron rod found at the southwest corner of said 34.85 acre tract, bears S 27°10'55" W, 985.66 feet;

THENCE, N 27°10'55" E, with the west line of said 34.85 acre tract and the east line of said 30.000 acre tract, at 514.32 feet, pass a 1/2" iron rod found at the northeast corner of said 30.000 acre tract, and continuing a total distance of 527.03 feet to the **POINT OF BEGINNING** and containing 4.200 acres (182,942 square feet) of land.

BEARING BASIS NOTE

The bearings described herein are Texas State Plane Grid Bearings, (Central Zone, NAD83 (CORS) Combined Scale Factor 1.00011). Project control points were established from reference station "AUS5CORS" having coordinate values of N=10,086,515.89, E=3,109,682.46 and "D-34-3001" having coordinate values of N=10,119,492.92, E=3,083,253.38.

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

That I, Gregorio Lopez, Jr., a Registered Professional Land Surveyor, do hereby state that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this 14th day of January, 2008, A.D.



Macias & Associates, L.P.
5410 South 1st Street
Austin, Texas 78745
512-442-7875

Gregorio Lopez Jr.

Gregorio Lopez, Jr.
Registered Professional Land Surveyor
No. 5272 - State of Texas

REFERENCES

MAPSCO 2003 462X
Austin Grid No. MC-34
TCAD PARCEL ID NO. 01-5634-0301
MACIAS & ASSOCIATES, L.P., PROJECT NO. 317-08-08

FIELD NOTES REVIEWED

By JOHN MOORE Date 1-15-2008
Engineering Support Section
Department of Public Works
and Transportation

**EXHIBIT A-3
(Tract 3)**



MACIAS & ASSOCIATES, L.P.
LAND SURVEYORS

EXHIBIT " _____ "

DHD Ventures, LTD.
To
The City of Austin
December 30, 2007

LEGAL DESCRIPTION

OF A 20.357 ACRE (886,753 SQUARE FOOT) TRACT OF LAND OUT OF THE S.T. BULLOCK SURVEY NO. 76, ABSTRACT NO. 2624 AND THE RIORDAN SURVEY NO. 76, ABSTRACT NO. 2618 IN TRAVIS COUNTY, TEXAS. SAID 20.357 ACRE TRACT ALSO BEING OUT OF THE REMAINING PORTION OF THE 312.76 ACRE TRACT CONVEYED TO ROBERT H. THERIOT BY DEED DATED JANUARY 9, 1998 BY INSTRUMENT OF RECORD IN VOLUME 13294, PAGE 1317 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS. AS SHOWN ON THE ACCOMPANYING SKETCH AND DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

POINT OF BEGINNING, at a ½" iron rod found on the south line of a 34.85 acre tract of land conveyed to MCPMT, LTD. by instrument of record in volume 4286, page 749, deed records of Travis County Texas, the northwest corner of a 42.00 acre tract conveyed to John E. and John M. Joseph, Trustees, by instrument of record in volume 11175, page 150 in the real property records of Travis County, Texas, an exterior corner of the remaining Theriot 312.76 acre tract, the northeast corner of a Cellular Antenna Site Lease and a corner of this tract;

THENCE, S27°03'26"W 465.17 feet with an east line of this tract and a west line of the 42.00 acre tract to a ½" iron rod with a "McAngus Surveying" cap;

THENCE, traversing through the 312.76 acre tract the following twenty three (23) courses;

1. N84°42'32"W, 223.30 feet to a ½" iron rod with a "McAngus Surveying" cap found;
2. N74°35'48"W, 195.30 feet to a magnetic nail found;
3. N41°52'08"W, 140.24 feet to a ½" iron rod with a "McAngus Surveying" cap found;
4. N01°32'12"E, 138.23 feet to a ½" iron rod with a "McAngus Surveying" cap found;
5. N45°46'37"W, 121.84 feet to a cotton spindle found;
6. N75°44'45"W, 84.61 feet to a ½" iron rod with a "Macias" plastic cap set;
7. N84°38'28"W, 21.74 feet to a magnetic nail found;
8. N23°30'46"W, 320.56 feet to a ½" iron rod with a "McAngus Surveying" cap found;
9. N24°20'57"E, 307.36 feet to a ½" iron rod with a "McAngus Surveying" cap found;

10. N04°34'51"E, 147.37 feet to a ½" iron rod with a "McAngus Surveying" cap found;
11. N30°19'35"W, 173.45 feet to a cotton spindle found;
12. N17°11'21"E, 109.07 feet to cotton spindle found;
13. N59°12'38"E, 99.88 feet to a ½" iron rod with a "McAngus Surveying" cap found;
14. S84°11'23"E, 85.38 feet to a ½" iron rod with a "McAngus Surveying" cap found;
15. S26°32'09"E, 145.69 feet to a ½" iron rod with a "McAngus Surveying" cap found;
16. S62°32'21"E, 63.66 feet to a ½" iron rod with a "McAngus Surveying" cap found;
17. S18°20'44"E, 105.92 feet to a ½" iron rod with a "McAngus Surveying" cap found;
18. S72°31'09"E, 65.93 feet to a cotton spindle found;
19. N31°45'27"E, 134.99 feet to a ½" iron rod with a "Macias" plastic cap set;
20. S81°21'46"E, 130.92 feet to a ½" iron rod with a "McAngus Surveying" cap found;
21. S35°19'41"E, 360.36 feet to a ½" iron rod with a "Macias" plastic cap set;
22. S24°41'57"W, 107.79 feet to a ½" iron rod with a "McAngus Surveying" cap found;
23. S20°38'53"E, 56.50 feet to a ½" iron rod with a "McAngus Surveying" cap found on an east line of this tract and the west line of said 34.85 acre tract;

THENCE, with the east line of this tract and the west line of said 34.85 acre tract, S27°12'10"W, 266.14 feet to a ½" iron rod found for a corner;

THENCE, S61°46'47"E, 337.29 feet to the POINT OF BEGINNING and containing 20.357 Acres (886,753 SQUARE FEET) of land.

BEARING BASIS NOTE

All bearings described herein are based upon the Texas State Plane Coordinates System, NAD 83 (1986) South Central Zone.

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

That I, Carmelo Lettere Macias, a Registered Professional Land Surveyor, do hereby state that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this 30th day of December, 2007, A.D.



Macias & Associates, L.P.
5410 South 1st Street
Austin, Texas 78745
512-442-7875

Carmelo L. Macias
Carmelo L. Macias
Registered Professional Land Surveyor
No. 4333 - State of Texas

REFERENCES

Austin Grid No. M 33
TCAD PARCEL ID NO. 01-51371-0101
Volume 13294, Page 1317

MACIAS & ASSOCIATES, L.P., PROJECT NO. 425-01-07

J: jobs/ctw/20AcreTract

FIELD NOTES REVIEWED


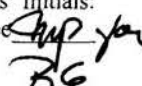
By JOHN MOORE Date 1-15-2008
Engineering Support Section
Department of Public Works
and Transportation

EXHIBIT B
TO
SPECIAL WARRANTY DEED

PERMITTED EXCEPTIONS

1. Restrictive Covenants recorded in/under 2004026540, 2004053529, 2004054128 and 2005107955, of the Real Property Records of Travis County, Texas. (As to Tract 3)
2. Easement, 100 ft. wide, for electrical transmission and distribution facilities, executed by Thomas B. Hughes and wife, Julia C. Hughes, to Lower Colorado River Authority, dated October 23, 1939, recorded in/under 632/164, being further affected by 8395/340, of the Real Property Records of Travis County, Texas, also shown and/or noted on the survey prepared by David Paul Carr (R.P.L.S. No. 3997), dated 12/20/07. (As to Tract 1)
3. Easement, 100 ft. wide, for electrical transmission and distribution facilities, executed by Thomas B. Hughes and wife, Julia C. Hughes, to Lower Colorado River Authority, dated October 23, 1939, recorded in/under 632/166, of the Real Property Records of Travis County, Texas, also shown and/or noted on the survey prepared by David Paul Carr (R.P.L.S. No. 3997), dated 12/20/07. (As to Tract 1)
4. Easement, 100 ft. wide, for electrical transmission and distribution facilities, executed by Thomas B. Hughes and wife, Julia C. Hughes, to Lower Colorado River Authority, dated February 6, 1940, recorded in/under 649/119, of the Real Property Records of Travis County, Texas, also shown and/or noted on the survey prepared by David Paul Carr (R.P.L.S. No. 3997), dated 12/20/07. (As to Tract 1)
5. Easement, 100 ft. wide, for electrical transmission and distribution facilities, executed by Thomas B. Hughes Estate, Oscar Hughes Administrator, to Pedernales Electric Cooperative, Inc., dated March 15, 1956, recorded in/under 1794/96, of the Real Property Records of Travis County, Texas, also shown and/or noted on the survey prepared by David Paul Carr (R.P.L.S. No. 3997), dated 12/20/07. (As to Tract 1)
6. Easement for electric and telephone lines executed by J.M. Vande Hey and Grace M. Bright, to City of Austin, dated August 22, 1962, recorded in/under 2511/76, of the Real Property Records of Travis County, Texas, also shown and/or noted on the survey prepared by David Paul Carr (R.P.L.S. No. 3997), dated 12/20/07. (As to Tract 1)
7. Easement, ten (10) ft. wide, for underground electric and underground telephone lines, executed by Comanche Peak Joint Venture, a Texas Joint Venture, to City of Austin, dated November 8, 1985, recorded in/under 9448/538, of the Real Property Records of Travis County, Texas, also shown and/or noted on the survey prepared by David Paul Carr (R.P.L.S. No. 3997), dated 12/20/07. (As to Tract 1)
8. Easement and right of way, twenty (20) ft. wide, for ingress/egress to the 50 x 50 ft. cell tower site, along with a utility easement, five (5) wide, granted in that certain Cellular Antenna Site Lease executed by and between Comanche Peak Joint Venture, as Lessor,

B-1

Parties' Initials:
Grantor  /Grantee 

and Austin Cellular Telephone Company, as Lessee, dated December 2, 1985, recorded in /under 9532/918, said Lessee's interest in the lease being assigned by instrument recorded in/under 9616/518 and amended by instrument recorded in/under 12060/39, and further assigned in 13340/217 of the Real Property Records of Travis County, Texas, and further amended by that certain unrecorded "Second Amendment" dated October 12/2004. (As to Tract 1)

9. Reservation of one-half of all minerals and oil rights, as described in instrument executed by W.H. Badger, R.T. Badger, Margaret Badger, Mary Elizabeth Blailock, Maggie C. Reed and husband, M.H. Reed, Stillman Badger, Ruth M. Waldrop and husband, A.E. Waldrop and Brandt Badger, Jr. to Thomas B. Hughes, dated August 18, 1928, recorded in/under 429/474, of the Real Property Records of Travis County, Texas, reference to said instrument is here made for all purposes. Title to said interest not checked subsequent to date of aforesaid instrument. (As to Tract 1)
10. Easement, 100 ft. wide, for electrical transmission and distribution facilities, executed by R.O. Kretzschmar, to Pedernales Electric Cooperative, Inc., dated December 12, 1956, recorded in/under 1793/392, of the Real Property Records of Travis County, Texas, and as shown and/or noted on the survey prepared by David Paul Carr (R.P.L.S. No. 3997), dated 12/21/07. (As to Tract 2)
11. Easement, five (5) ft. wide, for electric lines and telephone lines, granted to the City of Austin, recorded in/under 2179/228, of the Real Property Records of Travis County, Texas, and as shown and/or noted on the survey prepared by David Paul Carr (R.P.L.S. No. 3997), dated 12/21/07. (As to Tract 2)
12. Easement, five (5) ft. wide, for electric lines and telephone lines, executed by Richard O. Kretzschmar, to City of Austin, dated September 28, 1962, recorded in/under 2524/133, of the Real Property Records of Travis County, Texas, and as shown on the survey prepared by David Paul Carr (R.P.L.S. No. 3997), dated 12/21/07. (As to Tract 2)
13. Drainage and Lateral Support Easement executed by Daphene H. Schulze, et al., to Travis County, dated May 23, 1997, recorded in/under 12949/1301, of the Real Property Records of Travis County, Texas, and as shown and/or noted on the survey prepared by David Paul Carr (R.P.L.S. No. 3997), dated 12/21/07. (As to Tract 2)
14. Terms, conditions and stipulations contained in Participation Agreement executed by and between Montandon Community Property Management Trust, a family trust with Richard Buratti and Eda L. Montandon, Co-Trustees, and Balcones Canyonlands Coordinating Committee, dated December 1, 1997, recorded in/under 13081/682, of the Real Property Records of Travis County, Texas; along with any and all amendments or modifications thereto, and as shown and/or noted on the survey prepared by David Paul Carr (R.P.L.S. No. 3997), dated 12/21/07. (As to Tract 2)

B-2

Parties' Initials:
Grantor  Grantee 

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2008 Jan 17 08:29 AM

2008007873

BENAVIDESV \$92.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

Unofficial Copy

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

16

14663-07-00426 GAD

RECORDED BY
NORTH AMERICAN TITLE



WD 2008129833
14 PGS

14

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Under the threat of condemnation by the Grantee named herein, Comanche Canyon Development, Inc., a Texas corporation ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantor in hand paid by CITY OF AUSTIN, a home rule municipal corporation situated in the Counties of Travis, Williamson and Hays, in the State of Texas ("Grantee"), whose mailing address is P.O. Box 1088, Austin, Travis County, Texas 78767, Attn: Real Estate Services Division, the receipt and sufficiency of which consideration is hereby acknowledged and confessed, and for which no lien or encumbrance, express or implied, is retained, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY, unto Grantee, subject to all of the reservations, exceptions and other matters set forth or referred to herein, the following described real property, together with all improvements thereon, if any, and any and all rights and appurtenances pertaining to the "Property", including any development rights, utility rights, minerals, mineral rights, mineral royalty interests, water rights, adjacent streets, alleys, and rights of way (collectively the "Property"), to-wit:

Lots 40, 41 and 42, Block B, Comanche Canyon Ranch Area 3, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200600184, Official Public Records of Travis County, Texas.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, and Grantee's successors or assigns, forever; and, subject to all of the matters set forth or referred to herein, Grantor does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or part thereof, by, through, or under Grantor, but not otherwise; provided, however that this conveyance is made by Grantor and accepted by Grantee subject to: (a) all of the title exceptions revealed in or by the recorded documents and other matters listed on **Exhibit C** attached hereto and incorporated herein by reference; (b) all regulations, restrictions, laws, statutes, ordinances, obligations or other matters which affect the Property and which are imposed by or exist by reason of any regulatory, governmental, or quasi-governmental districts, entities, agencies, authorities or other bodies of any kind or nature; (c) all standby fees, taxes and assessments by any taxing authority for the current and all subsequent years, and all liens securing the payment of any of the foregoing; (d) all reservations, restrictions, covenants, conditions, and other matters set forth or referred to in this Deed; and (e) with regards to any and

all easements and or restrictive covenants previously granted directly to Grantee and covering any part of the Property, Grantor and Grantee hereby expressly acknowledge, stipulate and agree that the doctrine of merger will not apply to such Permitted Exceptions and that Grantee's rights under such easements will remain in effect separately from the title to the Property conveyed in this Deed, even though the underlying fee ownership of the Property, or any parts thereof, and such easements are now or hereafter vested in one party or entity.

Furthermore, Grantor does hereby impress the Property with the following restrictions:

1. The use of the property will be restricted to a raw water pump station facility (the "Facility").
2. The Facility will consist of (a) underground structures and equipment (the "Underground Improvements") and (b) above-ground structures and equipment (the "Above-Ground Improvements").
3. The Above-Ground Improvements will be restricted to:
 - a. Not more than three (3) pump station buildings (the "Pump Station Buildings"),
 - b. Pump station motors, furniture, equipment, machinery, instruments and carbon silos all located inside the Pump Station Buildings,
 - c. Driveways, drives and walkways (the "Access Ways"),
 - d. Water quality ponds (the "Water Quality Ponds"),
 - e. Retaining walls (the "Retaining Walls"),
 - f. (i) A perimeter wall (the "Perimeter Wall") and (ii) perimeter wall gates (the "Perimeter Wall Gates"), in each case located eight (8) feet inside the perimeter boundary of the Property, which fence may be constructed in two (2) phases as provided in paragraph 8 below,
 - g. A perimeter ranch fence (the "Perimeter Ranch Fence") which will be constructed around the perimeter of the portion of the Property not surrounded by the initial or first phase of the Perimeter Wall until the second phase of the Perimeter Wall is constructed as provided for in paragraph 8 below,
 - h. Raw water transmission lines (the "Above-Ground Raw Water Transmission Lines"),
 - i. One (1) raw water transmission line surge tank ("Surge Tank") for each Pump Station Building,

j. Four (4) electrical transformers ("Electrical Transformers") for each Pump Station Building,

k. Fire hydrants, and

l. Signage that complies with the City of Austin, Texas sign ordinance.

4. Each Pump Station Building will:

a. Be restricted to a footprint of not more than 18,000 square feet above-ground

b. Be restricted to a maximum height of fifty (50) feet measured from the lowest exterior grade contiguous to the individual Pump Station Building.

c. Have exterior façades, including variable height buttresses and fake chimneys, all constructed of indigenous stone of muted natural earth tones in color, specifically excluding Austin White Chert.

d. Have roofs constructed of mission style clay, concrete or metal tiles of variegated muted earthtone color.

e. Have window shutters and doors of muted earth tones in color.

5. Each Water Quality Pond and all Access Ways will be constructed with integral color concrete of a muted natural earth tone in color and the walls of each Water Quality Pond will have on the top thereof 5' high decorative metal fencing.

6. All Retaining Walls will be constructed of either (a) approximately 18" x 18" x 5' long limestone blocks stacked in a raked pattern back and will not exceed 9' high in any lift before terracing or (b) approximately 12" wide integral color concrete of a muted earth tone in color with stamped pattern or (c) approximately 12" wide integral color interlocking concrete masonry units of a muted earth tone in color or (d) a naturally cut stone face with a lip to retain top soil if a geotechnical report verifies the appropriateness thereof, in which case the lip will consist of limestone blocks being approximately 18" x 18" x 5' long in size.

7. The Perimeter Wall will be at least 8' in height and will be constructed (a) of pre-cast concrete 2' tall panels, muted earth tone colored (on both sides of each pre-cast panel), in dry-stack pattern and (b) dry-stack integral muted earth tone color pre-cast columns at a maximum 10' on center with the columns of equal height as the Perimeter Wall. All gates in the Perimeter Wall will be constructed of decorative metal or wood which gates can not be seen through and which will have decorative metal hinges, straps and supports. The Perimeter Wall may be constructed in two phases. The initial or first phase of the Perimeter Wall will surround all of the portions of the Property upon which Phase 1 and Phase 2 of the Facility are to be constructed as indicated on **Exhibit A** which is attached hereto and made a part hereof for all purposes. The initial or first phase of the Perimeter Wall will be constructed and in place prior to

the Facility being placed in operation. The second phase of the Perimeter Wall will be constructed and in place prior to the time that the portion of the Facility to be constructed on the portion of the Property surrounded by the Perimeter Ranch Fence is placed in operation.

8. The Perimeter Ranch Fence will be constructed of five-strand barbwire with steel posts and with one or more ranch gates.

9. No security razor wire, barbwire or anything similar thereto shall be placed on (i) the Perimeter Wall, (ii) the Perimeter Wall gates, (iii) the Perimeter Ranch Fence (except for five-strand barbwire) and (iv) the Perimeter Ranch Fence gates.

10. The Above-Ground Raw Water Transmission Lines will be maintained in a painted muted earth tone color, unless otherwise mandated by the State of Texas.

11. All Surge Tanks will be maintained in a painted muted earth tone color unless otherwise mandated by the State of Texas and will be constructed and maintained in a horizontal position.

12. All Electrical Transformers will be located between a Pump Station Building and a Retaining Wall.

13. The Property will be landscaped with predominantly native and naturalized plants selected from the "Grow Green" list approved by the City of Austin ("Native Vegetation").

14. Landscaping for the portion of the Property upon which Phase 1 and Phase 2 of the Facility are to be constructed will be designed to soften the visual impact of the Pump Station Buildings and will be substantially as indicated in **Exhibit A** which is attached hereto and made a part hereof for all purposes. Landscaping for the balance of the Property will be in substantial conformance with the landscaping reflected in **Exhibit A** and will be installed at the time that said balance of the Property is developed by Grantee.

15. There will be no on-site rock crushing or other processing of excavated material on the Property.

16. No oil well drilling, oil development operations, oil refining, quarrying, or mining operations of any kind will be permitted on the Property, nor will oil wells, oil tanks, or mineral excavations be permitted on the Property.

17. No part of the Property will be used or maintained as a dumping ground for rubbish or trash, and no garbage or other waste will be kept except in sanitary containers located within a Pump Station Building.

18. No animals, livestock, or poultry of any kind will be raised, bred, or kept on the Property.

19. No (a) above-ground utility service or transmission lines, (b) utility substations or (c) above-ground detention ponds will be permitted on the Property.

20. All Above-Ground Improvements and landscaping will be at all times maintained in good condition by the Grantee, its successors and assigns.

21. All stormwater from developed areas of the Property discharged from the developed areas of the Property onto the adjoining Beau Theriot Comanche Canyon Lands Preserve (the "Preserve") will be discharged in a manner whereby the discharged stormwater will be spread out to sheet flow overland, and not discharged in concentrated flows, so as to prevent erosion damage to the Preserve.

22. All exterior lighting on the Property will be shielded to protect properties which are covered by the Comanche Canyon Ranch Extraterritorial Jurisdiction Planned Unit Development Agreement of record in Document No. 2004054128, Official Public Records of Travis County, Texas (the "Comanche Canyon Ranch ETJ PUD") from light pollution. Exterior lights will be shielded so that all viewers of the Property and/or the Facility will not be able to directly view the source of light of a lighting facility or fixture.

23. Noise from the Facility will be controlled so that it does not exceed the sixty-five (65) decibels or lower, as measured at the outside of the Perimeter Walls, in order to avoid materially disturbing persons unaided by test and measurement devices who occupy property covered by the Comanche Canyon Ranch ETJ PUD. This noise restriction shall not apply to noise emanating from the Facility from time to time when Pump Station Building doors are being open and closed in connection with the operation of the Facility.

24. Vibration, emissions and odors from the Facility will be controlled, as measured at the outside of the Perimeter Walls, in order to avoid materially disturbing persons unaided by test and measurement devices who occupy property covered by the Comanche Canyon Ranch ETJ PUD.

25. Blasting on the Property will be tightly controlled and monitored so as to prevent any damage to persons or property.

26. The Facility will in general have the appearance reflected in the architectural rendering attached hereto as **Exhibit B** which was prepared by architect Marley Porter with Living Architecture and Construction Management, 4401 Cottonwood Drive, Cottonwood Shores, Texas 78657, Phone: 830-798-9310 who maintains the original color version of **Exhibit B** in his possession.

27. Construction activity and blasting on the Property will be restricted to the hours between 7:00 AM to 7:00 PM, Monday through Saturday provided however, shaft and tunnel excavation may take place twenty-four (24) hours per day and seven (7) days per week so long as excavated material is not hauled from the Property during the hours between 7:00 PM and 7:00 AM.

28. All construction traffic of Grantee, its employees, its contractors and subcontractors and the employees of such contractors and subcontractors to and from the Property will use Bullick Hollow Road and use of Oasis Bluff Drive and Comanche Trail by such construction traffic is prohibited.

28.A. Prior to commencing the actual construction of any phase of the Facility, as design progresses Grantee shall provide, at Grantee's expense, Grantor a copy of the applicable site development permit and construction plans in order for Grantor to provide Grantee any comments or suggestions regarding compliance with these Restrictions, at the following design completion milestones:

- (i) Thirty percent (30%) completion.
- (ii) Sixty percent (60%) completion.
- (iii) Ninety percent (90%) completion.
- (iv) One hundred percent (100%) completion.

As construction of each phase of the Facility progresses, Grantee shall provide, at Grantee's expense, Grantor copies of all certificates or other documentation by Grantee's inspecting engineer confirming that construction completed through the date of inspection conforms to the approved plans. Upon Grantor's request, Grantee shall, at Grantee's expense, within 90 days after final completion of each phase of the Facility, deliver to Grantor one complete set of copies of record drawings of the Facility prepared from contractor's as-built drawings.

29. Invalidity of any provision of these covenants or restrictions by court judgment or court order will in no way affect any other provision, and all other provisions will remain in full force and effect.

30. The covenants, conditions, and restrictions set out herein (the "**Restrictions**") will run with and bind the Property, and will inure to the benefit of, the following and their respective legal representatives, successors and assigns: (a) Grantor; or (b) any incorporated property owner association or home owner association which has authority over any of the lots located in any of the following subdivisions (collectively, the "**Comanche Canyon Ranch Subdivisions**"):

- i. Comanche Canyon Ranch Section One, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200500185, Official Public Records of Travis County, Texas ("**CCR Section One**");
- ii. Comanche Canyon Ranch Area Two, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200600062, Official Public Records of Travis County, Texas ("**CCR Area Two**");
- iii. Comanche Canyon Ranch Area Two, Lot 1, Block C Resubdivision, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200800028, Official Public Records of Travis County, Texas ("**CCR Area Two, Lot 1, Block C Resub.**"); or

- iv. Comanche Canyon Ranch Area Two, Lot 35, Block B Resubdivision, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Plat Document No. 200800027, Official Public Records of Travis County, Texas ("**CCR Area Two, Lot 35, Block B Resub.**").

In the event of the violation of these Restrictions by Grantee, and such violation is not cured within thirty (30) days written notice to Grantee by Grantor or any one or more of the Comanche Canyon Subdivision Associations, then the entity giving such notice, acting on behalf of Grantor and all of such Comanche Canyon Subdivision Associations shall have all rights available at law or in equity for enforcement of the Restrictions.

31. The covenants, conditions and restrictions set out herein will remain in full force and effect in the event the Property or any portion thereof is removed from the Comanche Canyon Ranch ETJ PUD.

32. The purposes of the covenants, conditions and restrictions set out herein are as follows:

A. To protect the value of and the views from the lots located in the Comanche Canyon Ranch Subdivisions by requiring the Property to be developed and maintained in a harmonious and compatible manner consistent with the above-described lots and subdivisions. As of the Effective Date of this Deed, the Property and all of the Comanche Canyon Ranch Subdivision and all lots therein are part of the Comanche Canyon Ranch ETJ PUD and are intended to be covered by a harmonious and compatible development plan. Grantee shall be deemed to have developed the Property and to be maintaining the Property in such harmonious and compatible manner so long as Grantee complies with the covenants and restrictions set forth in paragraphs 1-31 above and with Exhibits A and B attached hereto.

B. To protect the Preserve from erosion caused by stormwater run-off flowing from developed portions of the Property.

GRANTOR HAS EXECUTED AND DELIVERED THIS SPECIAL WARRANTY DEED AND HAS CONVEYED THE PROPERTY AND GRANTEE HAS RECEIVED AND ACCEPTED THIS SPECIAL WARRANTY DEED AND HAS PURCHASED THE PROPERTY "AS IS", "WHERE IS", AND "WITH ALL FAULTS" AND WITHOUT REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL (EXCEPT FOR THE WARRANTY OF TITLE EXPRESSLY SET FORTH IN THIS DEED).

[Remainder of this page intentionally left blank; signature page follows.]

EXECUTED in multiple counterpart originals as of the date of the acknowledgements set forth below; to be effective however, as of July 31, 2008.



GRANTOR:

Comanche Canyon Development, Inc., a
Texas corporation

By: Robert H. Theriot

Printed Name: Robert H. Theriot

Title: President

**AGREED TO AND ACCEPTED BY
THE CITY OF AUSTIN, TEXAS**

By: Lauraine Rizer

Name: Lauraine Rizer

Title: Manager, Office of Contract and Land
Management

APPROVED AS TO FORM:

ANDREWS KURTH LLP

By: Cassie B. Stinson

Cassie B. Stinson, Partner

Special Counsel to City of Austin

RETURN TO:
NORTH AMERICAN TITLE
823 Congress Ave., Suite 1400
Austin, TX 78701

4031545.1
7835.32448

HOU:2805365.10

ACKNOWLEDGEMENTS

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 31st day of July, 2008, by Robert H. Theriot, president of Comanche Canyon Development, Inc., a Texas corporation on behalf of said corporation.

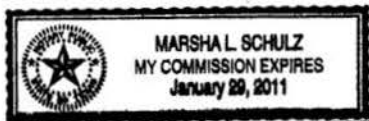


Georgia Duke
Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on July 30th, 2008, by Lauraine Rizer, Manager, Office of Contract and Land Management of the City of Austin, Texas, a Texas home rule municipality, on behalf of said municipality.



Marsha L. Schulz
Notary Public, State of Texas

AFTER RECORDING, RETURN TO:

City of Austin
Office of Contract and Land Management
Attention: Junie Marie Plummer
P. O. Box 1088
Austin, Texas 78767-8839
File #: 4037.01
TCAD No.: 01-5834-0201
01-5834-0202
01-5836-0101

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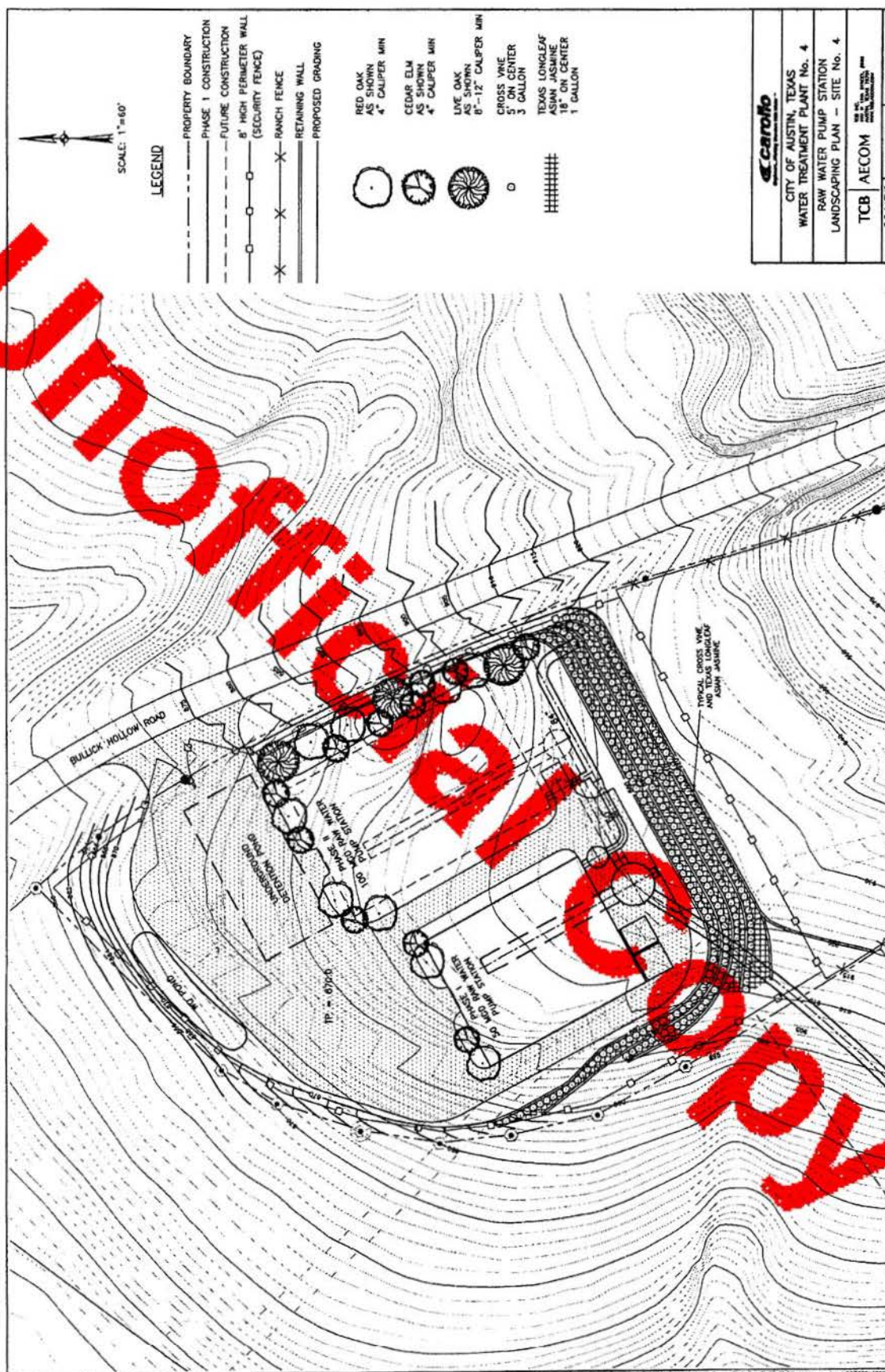


Exhibit A, Page 1



Exhibit A, Page 2



EXHIBIT "B"
PAGE 1 OF 1

Exhibit C

PERMITTED EXCEPTIONS

1. The following Restrictive Covenants of record itemized below:
 - a. Volume 13034, Page 27, Real Property Records of Travis County, Texas.
 - b. Document No. 2004026540, Official Public Records of Travis County, Texas.
 - c. Document No. 2004053529, Official Public Records of Travis County, Texas.
 - d. Document No. 2004054128, Official Public Records of Travis County, Texas.
 - e. Document No. 2005107955, Official Public Records of Travis County, Texas.
 - f. Document No. 2005109751, Official Public Records of Travis County, Texas.
 - g. Document No. 2005110584, Official Public Records of Travis County, Texas.
2. Overhead electric line and utility poles on and across the Property and fences lying off the Property lines as reflected on survey dated 4/11/2008 prepared by Gregorio Lopez, Jr., RPLS No. 5272.
3. Easement for Underground Water Tunnel granted to the City of Austin, as recorded in Volume 9678, Page 483, Real Property Records of Travis County, Texas.
4. 15' Wastewater Line Easement granted to Travis County Water Control & Improvement District No. 17, as recorded under County Clerk's Document No. 2004234548, Official Public Records of Travis County, Texas.
5. Critical Environmental Feature Buffer as shown on the subdivision plat recorded under Document No. 200600184, Official Public Records of Travis County, Texas.
6. Easement rights as set out on the subdivision plat recorded under Document No. 200600184, Official Public Records of Travis County, Texas.
7. All of the oil, gas and other minerals, together with all rights relating thereto, express or implied, as conveyed and/or reserved in documents recorded in Volume 3430, Page 1641, Volume 4572, Page 1205, Volume 5337, Page 240, and Volume 7185, Page 2295, Deed Records of Travis County, Texas.
8. Covenants providing for assessments as set out in instrument recorded under document No. 2005107955, Official Public Records of Travis County, Texas.
9. The rights of Travis County Water Control & Improvement District No. 17 to levy taxes and issue bonds.

Unofficial Copy

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2008 Jul 31 03:33 PM 2008129833

DAVISO \$68.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

6/26/08

TECHNICAL MEMORANDUM
IN SUPPORT OF APPLICATION FOR MINOR AMENDMENT
TO INCIDENTAL TAKE PERMIT TE-004683-2
FOR COMANCHE CANYON DEVELOPMENT, INC.

JUNE 26, 2008

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INTRODUCTION

Comanche Canyon Development, Inc., Permittee under U.S. Fish and Wildlife Service (the “Service”) Endangered Species Act (“ESA”) Section 10(a) permit Number TE-004683-2 (said permit, as amended, together with all supporting documents including but not limited to the Environmental Assessment and Habitat Conservation Plan, being referred to herein as the “Permit”), has submitted requests for minor amendments to the Permit to clarify that certain industrial uses, namely the construction, operation, and maintenance of a water treatment plant, raw water pump station, and related facilities and improvements, are authorized under the Permit. Specifically, incidental take of the golden-cheeked warbler (*Dendroica chrysoparia*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Tooth Cave spider (*Neoloeptoneta myopica*), and Tooth Cave ground beetle (*Rhadine persephone*) (collectively, the “Covered Species”) will not be increased, and mitigation set forth under the Permit for the Covered Species will not be decreased.

The property covered by the Permit is also subject to the Comanche Canyon Ranch Extraterritorial Jurisdiction Planned Unit Development, established by City of Austin Ordinance No. 041129-43, as amended, which dictates the application of City of Austin land development regulations to the property (“PUD”). Area 3 and 4 in the PUD are two of four tracts initially proposed for commercial and residential development under the Permit, identified as Tracts 1 and 2 on Figure 2 of the HCP. Tract 2 in the Permit, Area 3 in the PUD will be referred to herein as Area 3; Tract 1 in the Permit, Area 4 in the PUD will be referred to herein as Area 4. The raw water pump station is proposed to occupy portions of Area 3 and a portion of the proposed water treatment plant is proposed to occupy Area 4. The balance of the water treatment plant will be constructed on property located outside the area covered by the Permit.

The Permittee has prepared this Technical Memorandum in order to describe fully the requested amendment to the Permit and to provide a detailed analysis of all factors relevant to the Service’s consideration of the Permittee’s request for such amendment. This Technical Memorandum includes a description of the activities proposed to be covered by the amendment, along with the measures being incorporated into those activities to avoid and minimize impacts to listed species and the human environment, an analysis of the potential impacts of those activities on species listed under the ESA in relation to impacts authorized under the Permit, an analysis of the potential impacts of those activities on the human environment, and a justification for the proposed minor amendment.

DESCRIPTION OF ACTIVITIES PROPOSED BY THE CITY

The City of Austin – Austin Water Utility (AWU) is currently developing a new water treatment plant in north-central Travis County with Lake Travis as the raw water source. The plant will be built in phases, ultimately planned to reach a capacity of 300 Million Gallon per Day (MGD) or more. **Exhibit No. 1** shows the facilities location relative to its originally-planned location in the Bull Creek watershed. This plant will be the City's fourth water treatment plant and as such, has been named Water Treatment Plant No. 4. Preliminary design is currently underway and final design for the facility is expected to begin in July 2008. The development of the Water Treatment Plant No. 4 project consists of four basic components: the raw water intake on Lake Travis, the raw water pump station, the water treatment plant facilities, and the finished water distribution system. (Water Treatment Plant No. 4 and all its components will be collectively referred to herein as WTP4.)

The City had previously planned and permitted a site for its water treatment plant in the environmentally sensitive upper Bull Creek watershed, see **Exhibit No. 1**, referred to herein as the Bull Creek site. With growing concern over the impact of the plant on the Bull Creek area and potential species impacts, the City relocated WTP4 to the Comanche Canyon site.

The raw water pump station is proposed to occupy portions of Area 3. A portion of the proposed water treatment plant is proposed to occupy Area 4. These two areas were originally planned for residential development as part of the Comanche Canyon development, which includes other development areas and a preserve area as shown in **Exhibit No. 2**. The City of Austin has purchased Area 4 for the water treatment plant and is in the process of obtaining Area 3 for the raw water pump station.

Construction of the raw water pump station will consist of the excavation of the raw water tunnel access shafts, the raw water pump station buildings, parking areas, access drives, perimeter fence, and storm water facilities. The initial phase of construction will provide one building with a pumping capacity of 50-MGD. The second phase of construction will occur in the future, and include a second building housing a pumping capacity of 100-MGD. Ultimately, the raw water pump station capacity will be increased to 300-MGD or more either through construction of an additional pump station or an increase in capacity of the two existing pump stations.

The pump station consists of a building housing the mechanical, electrical, plumbing, and HVAC equipment necessary to pump the raw water to the treatment plant. Additionally, a water quality pond and detention facility will be used to treat run-off from the building and various parking structures. The storm water run-off will then be discharged into the existing road side swale. **Exhibit No. 3** shows the planned facilities and the approximate area required to fully develop the site for those facilities.

Operation of the raw water pump station requires minimal operator intervention. The pumps are controlled from the water treatment plant site, with no employee present at the pump stations on a regular basis. However, periodic maintenance of equipment will be required as will routine site visits to verify operation of the facility.

A portion of the water treatment plant lies in Area 4. The water treatment plant is connected to the raw water pump station via an underground transmission main. The initial phase of construction will consist of the excavation of the water treatment facilities, the access roads, various pump stations, storm water controls features, and distribution lines transporting finished water out to the City's distribution system. **Exhibit No. 3** shows the facilities to be constructed in Area 4 of the water treatment plant site. A brief description of each follows:

- Facility A - Main Electrical Building: This building will contain the primary electrical power supply equipment for distributing power for WTP 4. The building will be at grade with underground electrical conduits entering and exiting the building. The building will contain heating, air conditioning, and ventilation (HVAC) equipment, some of which may be installed on the outside of the building.
- Facility B - Dewatering Building: This building and its future expansion will contain centrifuges and associated equipment for dewatering the solids generated through the treatment process. Residuals hauling trucks will pull into the building, and the dewatered residuals will be dropped into the trucks from an elevated hopper tank. This building will be constructed at grade and will include outside HVAC equipment.
- Facility C - Residuals Storage: These tanks will store solids generated in the gravity thickeners. Secondary containment will be constructed around the tanks to contain potential leakage. Pumps in Facility B will be used to recirculate solids in the tanks and also pump them to the centrifuges.
- Facility D - Gravity Thickeners: This facility is used to concentrate the solids received from the Upflow Clarifiers located on the portion of the WTP 4 site outside Area 4. The unit will be an open, circular basin with a center-driven rake mechanism. The unit will be constructed partially underground.
- Facility E - Clearwells: The clearwells are used to store filtered water prior to distribution to the water system. They are large, concrete basins that are covered. Ultimately, they will be capable of storing up to 30 million gallons of water. Their depth could be up to 30 feet, potentially requiring up to 30 feet of excavation.
- Facility F - Tunnel Access Shaft: Shafts will be constructed to connect the above-ground piping from the finished water pump station to the distribution transmission mains that will be constructed in tunnels under the Edwards Formation to transmit finished water to the distribution system. These shafts could be around 40 feet diameter.
- Facility G - Finished Water Pump Station: This building will house the pumps used to convey water to the distribution system. Additionally, pumps within the building will be used to backwash the filters, which are located outside Area 4. The building will be constructed partially below grade and will include externally mounted HVAC equipment.

While the current configuration includes the above facilities within Area 4, the final configuration of the WTP 4 facilities could be modified as final design progresses in response to site conditions or other factors. Potentially facilities that could be relocated into Area 4 include the Upflow Clarifiers and the UV Disinfection building.

WTP 4 requires operation on a 24-hour, 7-days/week basis. At any time during the day or night, WTP 4 will be monitored/operated by a small number of individuals. Normal operation of the treatment facilities will be automatic, but operator intervention is often required. In addition to the daily operation of the facility, routine and/or periodic maintenance activities will be conducted to maintain the City's equipment in operating condition.

Phase one for the raw water pump station and treatment plant facilities will be constructed in multiple contracts over several years. Construction activities are projected to occur as follows:

- Treatment Plant Fence Construction. This project will include construction of a perimeter fence around the treatment plant site. It is tentatively planned to begin in November 2008 and require four to six months to complete.
- Pump Station Clearing, Excavation, and Stormwater Pond Construction. This project will include clearing of vegetation, excavation of the site down to the finished grade level for the pump building, and construction of stormwater facilities. It is tentatively planned to begin in October 2009 and require about one year to complete.
- Treatment Plant Clearing and Stormwater Pond Construction. This project will include clearing of vegetation and construction of stormwater facilities. It is tentatively planned to be completed at the same time as the pump station stormwater construction.
- Pump Station Facilities Construction. This project will include construction on Area 3 of the below ground facilities, a tunnel access shaft, the pump building, and associated appurtenances. It is tentatively planned to begin in February 2011 and require about two and a half years to complete.
- Treatment Plant Facilities Construction. This project will include construction of the complete treatment plant facilities, including those in Area 4. It is tentatively planned to begin in November 2010 and require about three years to complete.
- Treatment Plant Landscaping Installation. This project will include landscaping and sprinklers for designated areas within the treatment plant site. It is tentatively planned to begin in December 2013 and require about six months to complete.

Impact Avoidance Measures

As part of the City's proposed activities, the City has developed numerous environmental compliance measures designed to avoid and minimize potential adverse environmental effects. Among such measures relevant to the proposed amendments to the Permit are the following:

Vegetation

Facilities will be clustered within the tract. As opposed to the commercial/residential uses authorized under the Permit, the clustering of WTP4 facilities will result in large areas of native vegetation left undisturbed.

Storm Water

Best management practices to address storm water and construction site runoff will include the following measures.

Environmental Commissioning (EC) The City has implemented an EC plan that provides review of environmental protection issues by staff from the City's Watershed Protection and Development Review Department (WPDRD). WPDRD staff also has access to an independent consultant as a technical resource on environmental and water treatment engineering issues. The EC consultant reports to WPDRD rather than the AWU and is independent of AWU project staff and consultants. The EC process includes review of all environmental protection issues to ensure the City's environmental protection goals are met during design, construction, and operation of all components of the plant. This is a far greater level of environmental review and oversight than would have occurred for the permitted project.

Efficient Clearing and Grubbing Clearing of vegetation will be minimized to the extent practicable. Areas of clearing will be designated during the design phase and marked clearly on the ground during construction. To the extent practicable, large trees will be left in place.

Limit Soil Exposure Construction activities will be managed to limit exposed soils by phasing construction to keep unstabilized, disturbed areas to the minimum necessary at any one time. Each phase of construction will be temporarily or permanently stabilized prior to initiating disturbance in the next phase of construction. After the initial clearing, disturbed areas will be temporarily stabilized to the extent practicable. The remaining sequences of work will disturb soil only where necessary.

Protect Streams Tributaries to Bullick Hollow are susceptible to sedimentation and will be the focus of water quality protection measures. To the extent practicable, vegetation along these corridors will be maintained in its native state.

Install and Maintain Structural Best Management Practices (BMP's) Some of the BMP's to be used on the project include using temporary controls such as silt fencing, rock berms, temporary swales, mulching, and other temporary controls. Permanent controls such as water quality and detention ponds, grassy swales, vegetated strips, velocity control devices at outfall locations, rainwater harvesting, and other techniques will be implemented. These temporary and permanent controls will reduce, minimize or eliminate potential impacts to wetlands, water resources, and water quality. Proper installation, operation and maintenance of BMP's will follow City of Austin standard practices from the City's Environmental Criteria Manual.

Integrated Pest Management Plan (IPM) An IPM plan will be developed and implemented throughout the WTP4 site, including Areas 3 and 4. This plan will utilize non-toxic or least toxic alternatives for control of insect and plant pests. The plan will also require minimizing use of petroleum based fertilizers and encourage the use of mulch, compost, and other natural alternatives in a manner that prevents increased loading of nutrients in stormwater runoff.

Hazardous Materials Prior to construction, a plan will be developed to address the safe handling, storage, treatment, and/or disposal of hazardous materials that are brought onto the site, both during construction and operation of the treatment facility. The Hazardous Materials Management Plan will be completed in accordance with all federal, state, and local requirements. The Plan will include a procedure for personnel training, addressing management and response to hazardous waste situations, and a contingency plan for any spills or releases, including

response and/or containment procedures and reporting requirements. This will be a particular area of focus for the City's Environmental Commissioning Team.

Karst Features

If the City encounters a karst feature, the City will comply with all provisions in the Permit as well as any federal, state, and local state regulations.

Golden-Cheeked Warbler

The City will comply with all provisions in the Permit as well as any federal, state, and local regulations regarding the Golden-Cheeked Warbler.

Noise

Reasonable measures will be taken to avoid unnecessary noise, including locating mechanical equipment behind concrete or masonry walls on the portion of the facility furthest from the preserve. Such measures should be appropriate for the normal ambient sound level in the area during working hours. All construction machinery and vehicles shall be equipped with practical sound-muffling devices and operated in a manner to cause the least noise consistent with the efficient performance of the work. Additionally, the Contractor shall be required to meet applicable conditions of the Federal Fish and Wildlife Permit relative to construction activities.

Air

Excavating, drilling and tunneling activities will be monitored for the production of excessive dust. Watering will be used to control dust and prevent off-site migration during construction including the watering of haul roads and, as necessary, the spraying of equipment and work areas during excavation activities.

DESCRIPTION OF AFFECTED ENVIRONMENT

Vegetation

The description of existing vegetation in the Permit environmental assessment is generally the same as the vegetation in Areas 3 and 4.

Wildlife

The description of existing wildlife resources in the Permit environmental assessment is generally the same as the wildlife resources in Areas 3 and 4.

Listed, Proposed, and Candidate Species

A description of the endangered golden-cheeked warbler (GCWA) and listed karst invertebrate species is provided in the Permit and is therefore not restated here. As discussed in the Permit,

no rare plants have been found on any portion of the Comanche Canyon property and therefore will not be discussed or analyzed further. The endangered black-capped vireo and candidate Jollyville Plateau salamander are not discussed in the Permit but are considered in this document.

Black-capped Vireo - The black-capped vireo (BCVI), *Vireo atricapilla*, was proposed for listing on December 12, 1986 (51 FR 44808). On October 6, 1987, the species was designated as endangered in the entire breeding range in the United States where it has been known to occur: Kansas, Oklahoma, and Texas (52 FR 37420-37423). In addition, the BCVI breeds and winters in Mexico. The BCVI has a Service recovery priority of 2C, which indicates a species with a high degree of threat that is in conflict with construction or development projects or other forms of economic activity and has a high potential for recovery (USFWS 1991). Primary threats include a reduction in the breeding range, brown-headed cowbird brood parasitism, habitat loss and fragmentation, and the deterioration of habitat through the control of natural processes, particularly fire (USFWS 1991).

The BCVI typically begins to arrive in central Texas in early March and generally nests between April and early August (Grzybowski 1995). During the breeding season, BCVIs commonly nest in early successional, scattered hardwoods that have a dense understory of shrubs extending to the ground and spaces between thickets and clumps of scrubby vegetation. The species constructs its nests about one to six feet (0.3 to two meters) from the ground. Preferred nesting habitat typically has a low density and cover of Ashe juniper, although it is often one component of the BCVI's habitat (Campbell 1995). This habitat type most frequently occurs on rocky substrates with shallow soils, in rocky gullies on the edges of ravines, and on eroded slopes (USFWS 1991). BCVIs may live for more than five years, and usually return year after year to the same nesting territory (Campbell 1995), although they have also been known to colonize new areas (DLS Associates 1990). The birds begin to migrate to wintering grounds on Mexico's western coast in July and are gone from their Texas range by mid-September (Campbell 1995).

Populations of the BCVI are present in a number of localities in Texas, particularly on the Lampasas Cut Plains and Edwards Plateau. The eastern and southern edges of the range closely follow the Balcones Escarpment from Waco (McLennan County) to Brackettville (Kinney County). The range is likely discontinuous across the Llano Uplift and deterioration of the BCVI populations may be extensive, particularly from north-central Texas south to the San Antonio region (Bexar County). Fort Hood (Bell and Coryell counties) supports the largest known population. In 2005, it was estimated that over 8,000 male BCVIs were present on Fort Hood (95 percent confidence interval 6,196 to 10,593) (Chimprich 2005).

Travis County is on the eastern edge of the BCVI's range, and populations tend to be in small, dispersed groups. The Vireo Research Area/Wild Basin west of Loop 360 historically supported the largest colony of BCVIs (over 30 males during the 1980s), but numbers declined in the 1990s, and no BCVIs have been recorded at that site in recent years. Other groups have been found in the vicinity of RM 620 from the Four-Points area (intersection of RM 620 and RM 2222) south to Mansfield Dam, along Comanche Trail, along Bullick Hollow Road, along a ridgetop southeast of RM 2769 (Vireo Ridge), and east of Hwy 71 (Vireo Hill). USFWS (1996) provides a more complete description of BCVI occurrence and status in Travis County. Since 2000, annual Travis County BCVI populations have been estimated to be less than 30 males,

with small groups on and adjacent to the Cortaña property (3-5 males) along RM 620 south of Four-Points and on Vireo Ridge (12-21 males), and incidental sightings in other parts of the Balcones Canyonlands Preserve (BCP) (BCP 2001-2008).

No known BCVIs or habitat occur on or adjacent to Area 3 or Area 4. The closest known colony is about 1500 to 2000 feet south of Area 4 on the Cortaña and adjacent Riverplace property (along RM 620 south of Four-Points), which is further separated from Areas 3 and 4 by a major roadway (RM 620). Following active habitat manipulation on the upland portions of Cortaña and adjacent Riverplace properties in 1995, BCVIs began nesting in these areas again in 2000, and 3-5 males have consistently been found there each year since (BCP 2001-2008). Due to the distance from Areas 3 and 4 and existing effects of RM 620 (traffic, roadway noise), no impacts to the BCVIs on the Cortaña or Riverplace properties are anticipated. Because no impacts to the BCVI are anticipated, it is not discussed under Environmental Consequences.

Jollyville Plateau salamander - The Jollyville Plateau Salamander (JPS), *Eurycea tonkawae*, is a rare aquatic salamander found in wet caves and spring-fed streams in the Northern Edwards Aquifer northwest of Austin, Texas. Its range includes nine creek watersheds: Brushy, Bull, Buttercup, Cypress, Lake, Long Hollow, Shoal, Walnut, and West Bull. Spring pools, spring runs, and riffles dominated by spring flows provide the ideal surface habitat. Surface populations of JPS are typically found under loose rock substrates that are free of sediment and may also be found in stream leaf litter and aquatic plants. The JPS also inhabits subsurface habitats, as indicated by their re-emergence from springs that begin to flow after dry spells and anecdotal evidence suggesting that egg deposition occurs underground. Because this species remains aquatic throughout its life, it depends on the quality and quantity of groundwater for its survival. It is typically found in clean, clear, flowing water that has a narrow temperature range (approximately 18-21°C) and a mostly neutral pH (Davis et al. 2001, Bowles et al. 2006).

The JPS is threatened by rapid expansion of urban development throughout its limited range. Significant negative trends in JPS numbers have been documented at four of nine long-term monitoring sites, and JPS with deformities have been found at two sites (O'Donnell et al. 2006). All of these sites occur downstream of areas where the recharge zone and creek headwaters have been developed. In June 2005, the Save Our Springs Alliance petitioned the USFWS to add the JPS to the list of threatened or endangered species. On December 13, 2007, the USFWS made a 12-month finding which stated that listing the JPS as endangered is warranted but precluded due to other listing priorities (72 FR 71040-71054).

The Permit did not address the JPS, which at that time had not been formally described nor designated as a candidate for listing. Since that time, new information about the status of the JPS has become available. Due to concerns about potential impacts of building a water treatment plant near several large populations of JPS downstream of the former plant site in the Bull Creek watershed, the City of Austin spent considerable time and resources relocating WTP4 to an alternate site. During the search for an alternate site, City of Austin staff conducted presence-absence surveys on the Comanche Canyon property in November 2007, during which no JPS were found. There were several small springs and intermittent flow throughout the creeks on the property, which are part of the Cypress Creek watershed. However, there was little suitable surface substrate (loose rock substrates free of sediment), and much of the bedrock was bare or

covered with what appeared to be sediment from historic logging activities. JPS are found in other tributaries of Cypress Creek north of Bullick Hollow Road, so this may represent the limit of their distribution in this area, or historic land use (potentially from historic logging activities) may have eliminated or reduced their habitat on the Comanche Canyon property. Because the JPS has not been found on the property, no negative impacts are anticipated. However, relocating WTP4 to the Comanche Canyon property will benefit water quality, water quantity, and JPS downstream of the former site on upper Bull Creek (see Environmental Consequences, Indirect Impacts).

Wetlands

The Permit environmental assessment describes wetlands as occurring on the 446-acre Comanche Canyon site but outside the development zone. A field investigation by TCB, Inc. in 2008 of Area 4 and a remote reconnaissance by TCB, Inc. in 2008 for Area 3 were performed to identify wetlands on the respective sites. Prior to the site visit, aerial photographs and the U.S. Geological Survey (USGS) topographic quadrangle map (*Jollyville, Texas*) were used to identify potential areas of concern on the site. These areas included visible streams appearing on the aerial photograph and/or quadrangle map, and topographically defined drainage ways. In addition, National Wetland Inventory (NWI) Maps and the *Soil Survey for Travis County, Texas* (1974) were reviewed for potential wetlands and occurrence of hydric soils on the property. The field investigation resulted in no wetlands being identified on Area 4. The result of the remote reconnaissance for Area 3 showed no potential wetlands. The recent investigations found no wetlands other than those described in the Permit.

Geology

The description of geology in the Permit environmental assessment is generally the same as the geology in Areas 3 and 4.

Soils

The description of soils in the upland areas in the Permit environmental assessment is generally the same as the soils in Areas 3 and 4.

Land Use

The description of land use in the Permit environmental assessment is generally the same as the land use in Areas 3 and 4.

Water Resources

The description of water resources in the Permit environmental assessment is generally the same as the water resources in Areas 3 and 4.

Air Quality

The description of air quality issues in the Permit environmental assessment is generally the same as the air quality in Areas 3 and 4. In addition, the site is located in Travis County, Texas which is in attainment of all National Ambient Air Quality Standards (NAAQS). However, because monitored ozone levels in the Austin areas are very close to the 8-hour standard, Travis County, along with Bastrop, Caldwell, Hays, and Williamson counties, entered into an Early Action Compact on December 18, 2002 to develop and implement an emissions reduction plan to assure attainment of the 8-hour ozone standard by 2007 and maintenance through 2012. Changes in future attainment standards could affect attainment status.

Water Quality

The description of water quality in the Permit environmental assessment is generally the same as the water quality resources in Areas 3 and 4.

Cultural Resources

The description of cultural resources in the Permit environmental assessment is generally the same as the cultural resources in Area 3. No sites were discovered in the initial survey; however, later archeological investigations for the current project resulted in two sites being identified on the site that includes Area 4. Neither of these sites was deemed eligible by the Texas Historical Commission for inclusion in the National Register of Historic Places or for listing as State Archeological Landmarks per concurrence provided on May 8, 2008.

Socioeconomic Environment

The site is located in north-central Travis County. According to Census 2000, the county has experienced consistent growth over the past 30 years, growing from 295,516 residents in 1970 to 812,280 residents in 2000, at an average annual growth rate of 3.4 percent. The Capital Area Metropolitan Planning Organization (CAMPO) planning area encompasses all Travis, Hays and Williamson Counties. The population within the CAMPO boundary was approximately 1.16 million in 2000, and is expected to reach 2.75 million by 2030.

ENVIRONMENTAL CONSEQUENCES

Direct Impacts

Vegetation

Direct impacts to vegetation in Areas 3 and 4 will be less than impacts considered by the Service because facilities will be clustered within the tracts. As opposed to the commercial/residential uses authorized under the Permit, the clustering on WTP4 facilities will result in large areas of native vegetation left undisturbed.

Wildlife

Since less vegetation will be cleared, more resources will be available to wildlife in Areas 3 and 4; therefore, the proposed amendment will have less direct impact on wildlife.

Listed, Proposed, and Candidate Species

Golden-cheeked Warbler --Area 3 – Area 3 is not depicted in the Permit as GCWA habitat, but it does contain oak-juniper woodlands that will be cleared. The amendment will result in a reduction of direct impacts to the woodlands in Area 3 of about four and a half acres, from approximately 12 acres to seven and a half acres. **Exhibit No. 3.** Thus, it is anticipated that the proposed amendment would result in less direct effects than previously anticipated, would not increase in the level of take authorized by the permit, nor reduce the amount of preserve land (336 acres) identified in the Permit.

Golden-cheeked Warbler --Area 4 – The amount of habitat directly affected by clearing and development activities in Area 4 will be limited to the currently approved development envelope, approximately 20 acres. **Exhibit No. 3.** Thus, it is anticipated that the proposed amendment would result in less direct effects than was previously anticipated, would not increase in the level of take authorized by the Permit, nor reduce the amount of preserve land (336 acres) identified in the Permit.

Karst Invertebrates --Area 3 - The footprint of the pump station in Area 3 (approximately 7.5 acres) would be less than the previously proposed commercial/residential development (approximately 12 acres). A karst feature survey was conducted on the Comanche Canyon property in 1999, finding no caves, sinkholes, or other visible karst features (SWCA 1999). The pump station would be located in the Walnut Formation, which is below the geologic formation (Edwards Formation) where the listed species are generally found. If additional structures are built on the remainder of the seven and a half acres, a portion of this area occurs along the edge of the Edwards Formation. However, Area 3 is located below the 1010-foot contour interval, which appears to be less conducive to the formation of caves inhabited by listed species (Mike Warton & Associates 1998, HVJ Associates 2008, (USFWS 2008). Because Area 3 lies below the zone of known endangered karst species habitat, no direct impacts that are unaccounted for in the Permit are anticipated.

Karst Invertebrates --Area 4 - The proposed development footprint for Area 4 will remain within the currently approved 20-acre development envelope. Two karst feature surveys have been conducted on the property, finding no caves, sinkholes, or other visible karst features (SWCA 1999, Zarker 2008). Direct impacts would be expected to occur only if an unknown void occupied by listed species were found during excavation.

Since the property has been extensively surveyed for karst, the likelihood of encountering an extensive void at the surface is small, but as with any development, additional karst features could be intersected at excavated depths. The Permit did not discuss the depth of excavation, but the PUD authorizes a maximum excavation depth of eight feet for the commercial/residential development, which under the proposed amendment will be increased to 30 feet. Given the amount of disturbance anticipated from excavating to eight feet, the additional excavation depth

is not expected to significantly increase the likelihood of finding endangered species habitat. However, as contemplated in the Permit, unknown subsurface voids may be encountered. Further, the western half of Area 4 is located below the 1010-foot contour interval, which appears to be less conducive to the formation of caves inhabited by listed species (Mike Warton & Associates 1998, HVJ Associates 2008, USFWS 2008). In the unlikely event that a void was found during excavation, the City of Austin would follow the protocols outlined in the Permit.

Jollyville Plateau salamander --Area 3 – There are currently no known JPS locations along the portion of Cypress Creek on or below the Comanche Canyon property; no direct impacts are anticipated.

Jollyville Plateau salamander --Area 4 – There are currently no known JPS locations along the portion of Cypress Creek on or below the Comanche Canyon property; no direct impacts are anticipated.

Wetlands

No wetlands were identified in Areas 3 and 4. Therefore, the proposed amendment will have no direct effects on wetlands.

Geology and Soils

Areas proposed for development in Areas 3 and 4 are underlain by the basal member of the Edwards Formation and the Walnut Formation. The location of the pump station on Area 3 will require the construction of an access shaft for the raw water tunnel connecting the raw water intake in Lake Travis as well as excavation of a tunnel portal for the raw water transmission main to the treatment plant. Development of the pump station and access shaft is proposed on the lower elevations of the site to avoid construction activity and excavation within the Edwards Formation. Spoil materials from the excavation activities will be transported off-site and disposed of in an appropriate manner.

Other areas proposed for the development envelope of Areas 3 and 4 are underlain by the Edwards Formation. Construction will require some drilling, excavation and tunneling to level the site and construct the raw water tunnel and shaft. Increasing excavation depths beyond that in the Permit will result in greater disturbance of the geology and create some level of increased risk of intersecting subsurface voids. However, surface surveys did not identify any surface karst features and borings did not identify any unexpected void development in the plant area. The City of Austin intends to maintain the same void evaluation and mitigation measures as described in the current permit and therefore, no significant additional impact is anticipated.

Soil disturbances of Areas 3 and 4 will be less than impacts considered by the Service because facilities will be clustered within the tracts. As opposed to the commercial/residential uses authorized under the Permit, the clustering on WTP4 facilities will result in large areas of soil left undisturbed. Grading will comply with applicable City of Austin erosion control regulations.

Land Use

The impact to land use on Area 3 will be essentially the same as that stated in the Permit. The City will construct the pump station on Area 3 in compliance with the architectural standards of the neighboring Comanche Canyon residential subdivision.

The impact to land use on Area 4 will not be materially different than other large scale commercial uses in the vicinity. Part of the treatment plant site immediately adjacent to Area 4 contains a large power line and there are other even larger power lines in the area. Additionally, several commercial developments are located in the general area, including a large grocery store at the northeast corner of RR 620 and RM 2222.

Water Resources

There will be less impervious cover on Area 3 than currently contemplated under the Permit, which should lessen impacts to on-site recharge. Due to the reduction in impervious cover on Area 3 and the very limited water resources on-site or nearby the effects on water resources is expected to be minimal.

There will be more impervious cover on Area 4 than currently contemplated under the Permit. Any impact this additional impervious cover places on water resources is offset by the use of stormwater management techniques. (See Impact Avoidance Measures)

Air Quality

Development of WTP4 in Areas 3 and 4 is expected to result in a decrease in the number of gas-powered vehicles on the property from that stated in the Permit, which may result in some improvement in air quality. Construction of WTP4 could result in additional dust due to the greater depth of excavation. However, significant controls will be in place to control this. Therefore, the proposed amendment is not expected to significantly impact Air Quality.

Water Quality

Impacts to water quality may be less than those originally contemplated in Area 3 because the level of impervious cover is reduced, vehicle trips are reduced, and an Integrated Pest Management plan to minimize or eliminate pesticide and fertilizer use will be implemented.

The Austin City Council has adopted a policy requiring that all new City facilities implement enhanced water quality controls beyond what would otherwise be required under City Code. The enhanced controls (see Impact Avoidance Measures) are expected to mitigate the increase in impervious cover on Area 4. Reduced vehicle trips and implementation of an Integrated Pest Management plan to minimize or eliminate pesticide and fertilizer use will also minimize impacts to water quality.

As described above, the proposed amendment is not expected to significantly impact water quality.

Cultural Resources

The impact to cultural resources is essentially the same as that stated in the Permit. Therefore, the proposed amendment is not expected to impact cultural resources.

Socioeconomic Environment

The potential impacts to socioeconomic environment are not expected to be materially different from those anticipated under the Permit.

Indirect Impacts

Vegetation

The indirect impacts to vegetation from Areas 3 and 4 are likely to be less than that anticipated in the Permit because the WTP4 project will be landscaped primarily with native vegetation. This should limit or prevent impacts from invasive species that would likely be introduced by residential development.

Additional clearing of vegetation off-site for WTP4 will be offset by preservation of the Bull Creek site.

Wildlife

The indirect impacts to wildlife from Areas 3 and 4 are essentially the same as that stated in the Permit. No buildings with significant glass exterior surfaces, which can cause mortality from bird strikes, would be built on this site. No additional indirect impacts to wildlife are anticipated.

Listed, Proposed, and Candidate Species

Golden-cheeked Warbler --Area 3 --Additional dust could be generated during construction from the increased excavation depth, but significant controls are planned to minimize this effect (see Impact Avoidance Measures). Other indirect effects are expected to be eliminated or reduced with the change from a commercial/residential development to a raw water pump station, including noise (plant is generally quiet), traffic (significant reduction), people (significant reduction), and pets (will not be allowed). Only native plants will be used for landscaping, and an IPM plan will be implemented to avoid introducing invasive plants and runoff of fertilizers and pesticides. No buildings with significant glass exterior surfaces, which can cause mortality from bird strikes, would be built on this site. Thus, no additional negative indirect impacts are expected to occur.

Relocating WTP4 to Areas 3 and 4 will provide a net benefit by protecting GCWA habitat on the Bull Creek site from both direct impacts (102 acres) and indirect impacts (per Service practice, approximately 250 feet from the perimeter of the 102-acre footprint). Thus, with the proposed WTP4 relocation, the indirect impacts addressed for the GCWA are expected to be significantly less than those anticipated in the Permit.

Golden-cheeked Warbler --Area 4 --Additional dust could be generated during construction from the increased excavation depth (will increase from 8 to 30 feet), but significant controls are planned to minimize this effect (see Impact Avoidance Measures). Other indirect effects are expected to be eliminated or reduced with the water treatment plant, including noise (plant is generally quiet), traffic (significant reduction), people (significant reduction), and pets (will not be allowed). Only native plants will be used for landscaping, and a significant IPM plan will be implemented to avoid introducing invasive plants and runoff of fertilizers and pesticides. No buildings with significant glass exterior surfaces, which can cause direct mortality from bird strikes, would be built on this site. Clarifiers will contain uncovered pools of chlorinated (about 2 mg/L) water, which could attract grackles (*Quiscalus* sp.) and other potential predators, but this is not expected to have a more significant effect than swimming pools in a residential development.

Some chemicals typically used in the water treatment process will be stored off-site. The likelihood of a chemical release that would be harmful to the GCWA is remote.

Relocating WTP4 to the Comanche Canyon site will provide a net benefit by protecting GCWA habitat on the former site in upper Bull Creek from both direct impacts (102 acres) and indirect impacts (per USFWS protocol, approximately 250 feet from the perimeter of the 102-acre footprint).

Considering the above, the indirect impacts addressed for the GCWA are expected to be significantly less than those anticipated in the Permit.

Karst Invertebrates --Area 3 -Relocating WTP4 to the Comanche Canyon property will provide permanent protection of two caves (Down Dip Sink and Garden Hoe Cave) on the former site in upper Bull Creek, both of which contain the Tooth Cave ground beetle. A third cave (Disbelievers Cave), which also contains the Tooth Cave ground beetle, is located along the former WTP4 property boundary. Relocating WTP4 will protect large areas around these features and avoid direct and indirect impacts. Potential indirect effects that are no longer going to occur from developing the former WTP4 site could have included a reduction in the surface and subsurface drainage basin, natural vegetative buffers, cave cricket populations, and other nutrient inputs. Thus, with the proposed WTP4 relocation, the indirect impacts addressed for the karst invertebrates are expected to be significantly less than those described in the Permit.

Karst Invertebrates --Area 4 - No known karst features with listed species have been found on the Comanche Canyon property.

Relocating WTP 4 to the Comanche Canyon property will provide permanent protection of two caves (Down Dip Sink and Garden Hoe Cave) on the former site in upper Bull Creek, both of which contain the Tooth Cave ground beetle. A third cave (Disbelievers Cave), which also contains the Tooth Cave ground beetle, is located along the former WTP4 property boundary. Relocating WTP4 will protect large areas around these features and avoid direct and indirect impacts. Potential indirect effects that are no longer going to occur from developing the former WTP4 site could have included a reduction in the surface and subsurface drainage basin, natural vegetative buffers, cave cricket populations, and other nutrient inputs. Thus, with the proposed

WTP4 relocation, the indirect impacts addressed for the karst invertebrates are expected to be significantly less than those described in the Permit.

Jollyville Plateau salamander --Area 3 – There are currently no known JPS locations along the portion of Cypress Creek on or below the Comanche Canyon property, so no negative indirect impacts are anticipated.

Relocating WTP4 from the original site to the Comanche Canyon property will protect a significant portion of the recharge zone in the upper Bull Creek watershed, which will provide net benefits to water quality, water quantity, and JPS populations on and downstream of the former WTP4 site.

Jollyville Plateau salamander --Area 4 – There are no known JPS locations along the portion of Cypress Creek on or below the Comanche Canyon property, so no negative indirect impacts are anticipated.

Relocating WTP 4 from the original site to the Comanche Canyon property will protect a significant portion of the recharge zone in the upper Bull Creek watershed, which will provide net benefits to water quality, water quantity, and JPS populations on and downstream of the former WTP4 site.

Wetlands

No indirect impacts to wetlands are anticipated as a result of WTP4 construction on Area 3. In Area 4, higher impervious cover than anticipated in the Permit has the potential to create additional impacts to springs and seeps in the nearby canyons by limiting recharge of stormwater. The potential impact will be minimized through the environmental commissioning plan (see Impact Avoidance Measures). Thus, the indirect impacts to wetlands are not materially different than anticipated in the Permit.

Geology and Soils

The indirect impacts to geology and soils are essentially the same as that stated in the Permit.

Land Use

No significant indirect impacts to land use are expected to occur as a result of the proposed action. Most of the properties adjacent to, or in the vicinity of Areas 3 and 4 are currently protected by the BCP. Two properties to the Southeast of Area 4 will be incorporated into the design of WTP4, see **Exhibit No. 1**. For other properties in the area that are developed, or planned for development, the proposed action will not change or impact those properties. The indirect impacts to land use are essentially the same as that stated in the Permit.

Water Resources

WTP4 will increase impervious cover above what would otherwise be allowed under the PUD or City regulations. However, WTP4 will include enhanced water quality controls that will provide

a greater level of stormwater treatment and control of off-site discharges. The potential impacts to water resources are not expected to be materially different from those anticipated under the Permit.

Air Quality

Development of WTP4 in Areas 3 and 4 is expected to result in a decrease in the number of motorized vehicles in the area from that stated in the Permit, based on the minimal human interface needed to operate WTP4, which may result in some improvement in air quality. No adverse indirect impacts to air quality are anticipated.

Water Quality

Development of WTP4 in Areas 3 and 4 is not expected to result in greater water quality degradation than that anticipated under the Permit. Reduction in impervious cover in Area 3 over the permitted development should reduce any water quality impacts by reducing stormwater volume and pollutant loading. Pollutant loading in Area 3 should be further reduced by the dramatically fewer vehicles that will be on-site as compared to the development anticipated in the Permit for this Area.

Planned increases in impervious cover in Area 4 are mitigated by enhanced stormwater management techniques that will include enhanced structural controls, rainwater harvesting, vegetated strips and other methodologies. Pollutant loading from a water treatment plant is expected to be dramatically less than the loading from a residential development due to the reduction in numbers of vehicles and vehicle trips. Pollutant loading in stormwater should be further reduced by the City of Austin's plan to implement an IPM plan that will eliminate or minimize fertilizer and pesticide use. No such plan was required under the permit. Due to these changes in on-site vehicles and pollution management the potential impacts to water quality are not expected to be materially different from those anticipated under the Permit.

Cultural Resources

The indirect impacts to cultural resources are essentially the same as that stated in the existing Section 10(a) Permit. No indirect impacts to cultural resources are anticipated.

Socioeconomic Environment

Development of WTP4 in Areas 3 and 4 will result in a decrease of the overall population than that stated in the Permit. The proposed action may also result in a decrease in supportive businesses such as retail stores, gas stations, and restaurant. There may also be a decrease in the demand for schools, road repairs, and other public services in the area.

Potential Induced Growth

Certain types of infrastructure development have been recognized to have indirect environmental effects by inducing growth and development. This is true, for example, with respect to some

highway interchanges. This has not, however, generally been recognized to be the case with respect to provision of water treatment capacity, particularly where raw water is not severely constrained and there are multiple potential purveyors of treatment capacity. Careful consideration has been given to whether the construction of WTP4 would induce growth and development such that the environmental consequences of that growth and development should be evaluated in connection with the proposed amendments to the Permit. While WTP4 will serve a rapidly urbanizing area, the water provided by the plant will not increase the likelihood, scale, pace, location, or environmental impacts of growth and development. Stated another way, the failure to construct WTP4 would not materially limit growth in the region. There is abundant raw water in the Highland Lakes available for treatment and there are multiple governmental and non-governmental parties capable, prepared, and planning to provide potable water. For example, the cities of Round Rock, Leander, and Cedar Park are currently planning a major water treatment plant in the region using raw water from Lake Travis. Similarly, the LCRA has the capability to plan and construct major water treatment facilities in the region. In fact, the LCRA has already constructed and operated such facilities to serve growth in the region, and have repeatedly indicated their willingness, as a matter of policy, to do so in the future. In short, it is reasonable to conclude that growth and development will continue in the region without regard to the construction of WTP4. On the other hand, it would not be reasonable to conclude that other potential suppliers would necessarily plan, construct and operate a water treatment plant with all the environmental safeguards described in this memorandum.

Moreover, even if one were to conclude that construction of WTP4 did have a growth inducing effect, the environmental consequences of that growth on resources at issue in this action are already largely being addressed through other regional planning efforts and regulation. The Balcones Canyonlands Conservation Plan in particular provides a reliable guide for the future impacts that growth in Travis County will have on listed species. That plan also provides significant mitigation of those impacts and WTP4 was considered and authorized in the plan. Williamson County is also in the latter stages of developing a regional habitat conservation plan. The region benefits from some of the most significant wild lands preservation and regional planning in an urban area in the country. Similarly, regulations of the City of Austin and other jurisdictions have a mitigating effect on the impacts of growth and development on a variety of resources.

Cumulative Impacts

The cumulative effects are not materially different from those anticipated under the Permit.

Climate Change

There is significant public concern regarding the impacts of climate change. The City of Austin recognizes that concern and therefore will design WTP4 to mitigate climate change impacts in the following ways:

- (1) By tapping into Lake Travis, the highest local water source, and locating the facilities in the northwest, it is projected that for the first phase, the corresponding reduction in greenhouse gas emissions is about 15,000 tons per year when compared to a similar facility supplied from Lady Bird Lake.

-
- (2) The facility designs will be optimized to reduce greenhouse gas emissions and energy use. Specifically, compact layout of structures, recarbonation facilities, upflow clarifiers, filtration, ammonia feed systems, and premium efficiency motors throughout will be designed as sustainable components.
 - (3) The City of Austin has adopted a Climate Protection Plan, a citywide program with the goal to reduce significantly Austin's carbon footprint.

Climate change impact on the GCWA will be felt uniformly throughout the range of the species.

CONCLUSION

Based on the information and analysis presented and referred to in this Technical Memorandum, the requested amendments are appropriate and do not increase the permitted impacts on, nor decrease the mitigation for, the Covered Species under the Permit. In addition, the amendments are not expected to result in direct, indirect, or cumulative impacts to the human environment materially different from those considered in the Permit. Therefore it is appropriate that the Service process the request amendment as “minor” amendments to the Permit.

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EXHIBIT No. 1

VICINITY MAP

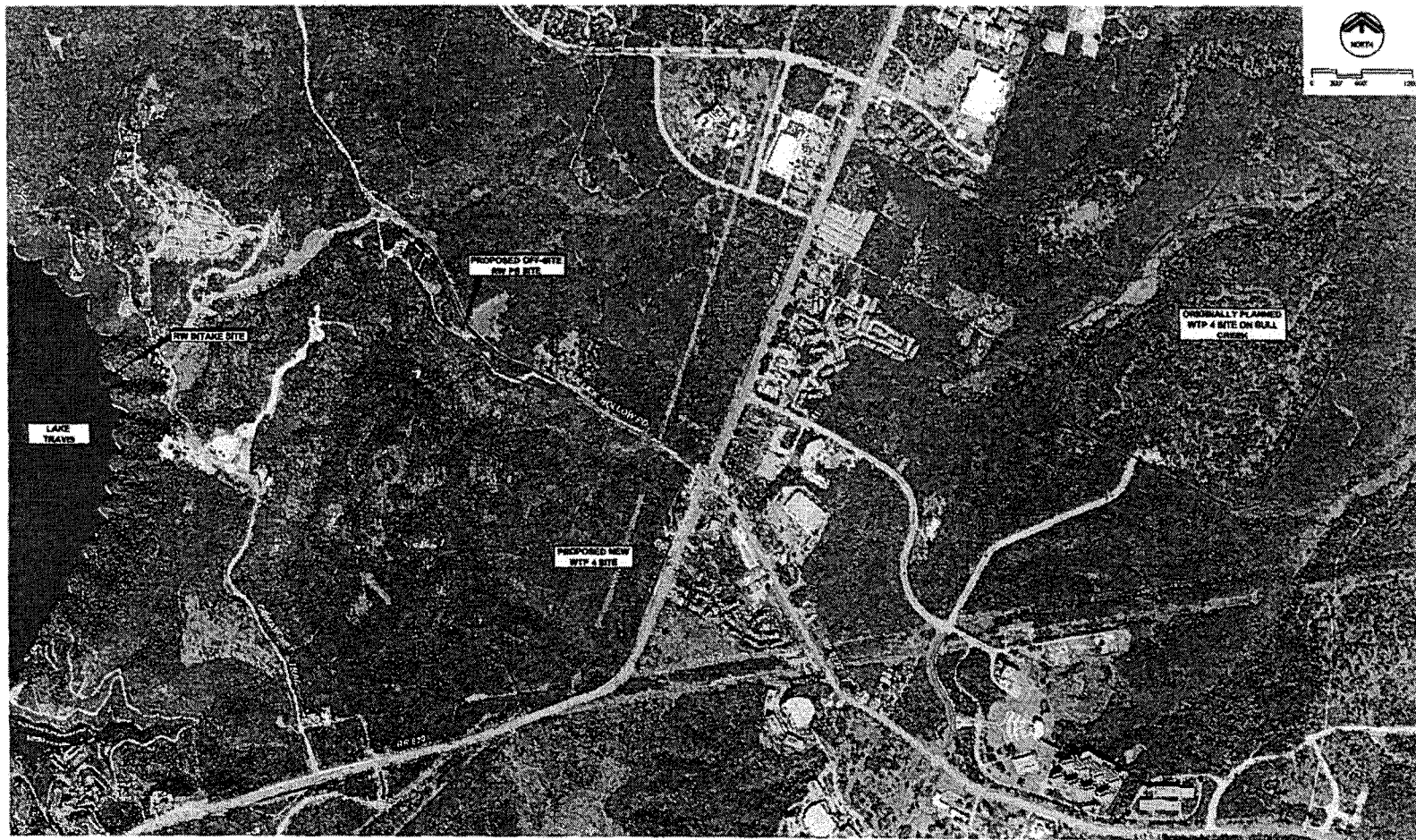
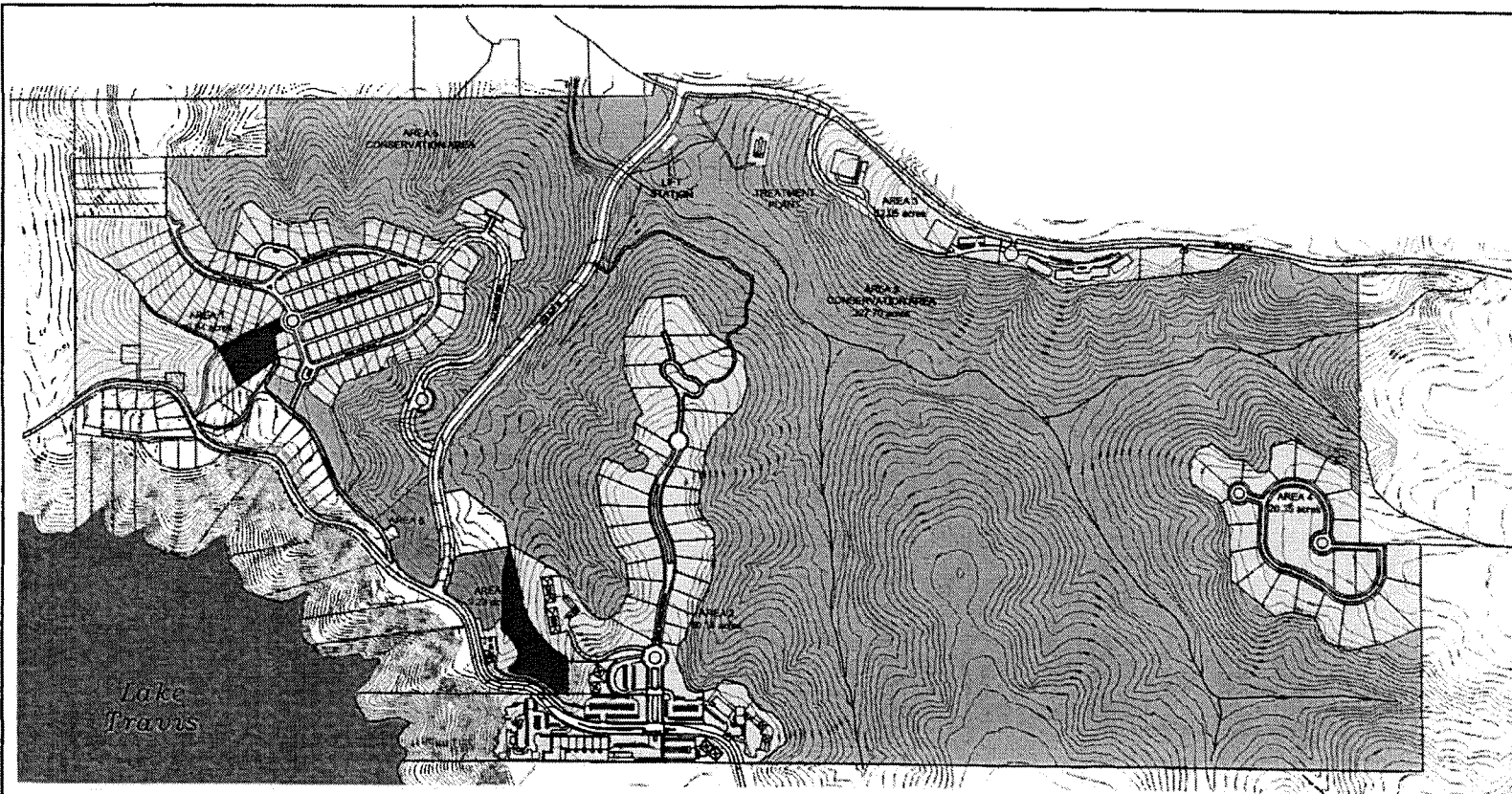


EXHIBIT No. 2

OVERALL PERMIT AREA



| COMANCHE CANYON RANCH 470.8 Total Acres | | |
|--|--|------------|
| AREA | LAND USE | ACREAGE |
| 1 | Residential: 80 Single Family Home Sites | 48.84 ac. |
| 2 | Residential: 30 Single Family Lots 34 Condo Units Commercial/Office: 5 Bldgs-49,800 Sq Ft Total Restaurant: 2800 seats Retail: 40,000 Sq Ft Parking Structure: 350 spaces | 50.18 ac. |
| 3 | Residential: 2 Single Family Lots 40 Condo Units 24 Town Home Units | 12.95 ac. |
| 4 | Residential: 21 Single Family Lots | 20.35 ac. |
| 5 | Conservation Area Lift Station | 327.78 ac. |
| 6 | Vineyard (5.21 ac) Water Quality Re-treatment (1.31 ac) Open Space (2.78 ac) | 9.26 ac. |
| | Right-of-way to be dedicated | 2.4 ac. |



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CIVIL, ENGINEERING & CONSULTING SERVICES
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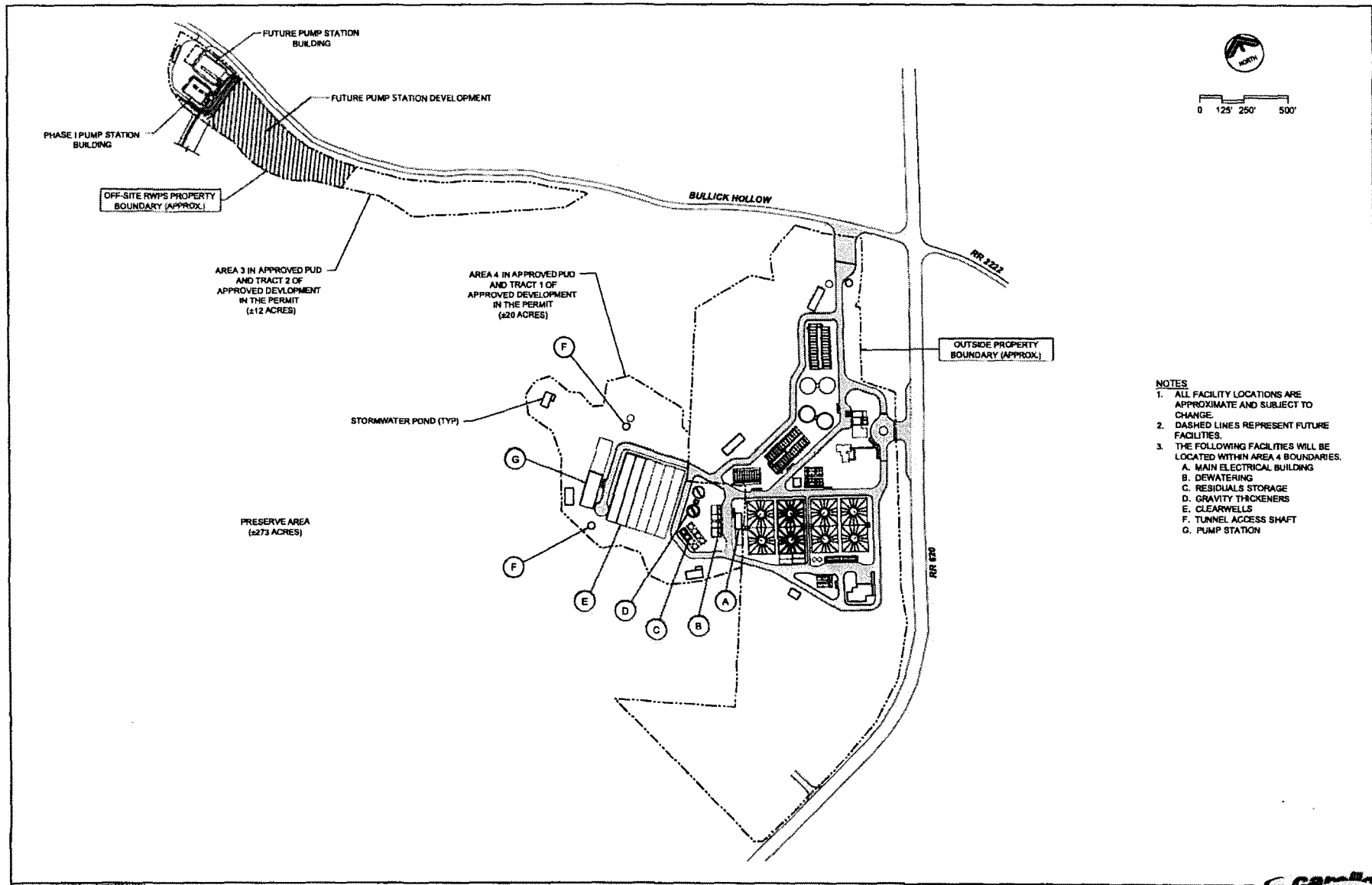
HOLFORD GROUP
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Austin, Texas 78749
Phone: (512) 794-8800

COMANCHE CANYON RANCH

DATE: _____
DESIGNER: _____
CHECKED: _____
APPROVED: _____
DATE: 11-18-03
BY: JH-03
SCALE: N/A
FOLDER: N/A
FILE NAME: Comanche(12-18-03)

EXHIBIT No. 3

PROPOSED DEVELOPMENT AREA



NOTES

1. ALL FACILITY LOCATIONS ARE APPROXIMATE AND SUBJECT TO CHANGE.
2. DASHED LINES REPRESENT FUTURE FACILITIES.
3. THE FOLLOWING FACILITIES WILL BE LOCATED WITHIN AREA 4 BOUNDARIES.
 - A. MAIN ELECTRICAL BUILDING
 - B. DEWATERING
 - C. RESIDUALS STORAGE
 - D. GRAVITY THICKENERS
 - E. CLEARWELLS
 - F. TUNNEL ACCESS SHAFT
 - G. PUMP STATION

TECHNICAL MEMORANDUM

IN SUPPORT OF APPLICATION FOR MINOR AMENDMENT

TO INCIDENTAL TAKE PERMIT TE-004683-2

FOR COMANCHE CANYON DEVELOPMENT, INC.

JUNE 26, 2008

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INTRODUCTION

Comanche Canyon Development, Inc., Permittee under U.S. Fish and Wildlife Service (the “Service”) Endangered Species Act (“ESA”) Section 10(a) permit Number TE-004683-2 (said permit, as amended, together with all supporting documents including but not limited to the Environmental Assessment and Habitat Conservation Plan, being referred to herein as the “Permit”), has submitted requests for minor amendments to the Permit to clarify that certain industrial uses, namely the construction, operation, and maintenance of a water treatment plant, raw water pump station, and related facilities and improvements, are authorized under the Permit. Specifically, incidental take of the golden-cheeked warbler (*Dendroica chrysoparia*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Tooth Cave spider (*Neoloeptoneta myopica*), and Tooth Cave ground beetle (*Rhadine persephone*) (collectively, the “Covered Species”) will not be increased, and mitigation set forth under the Permit for the Covered Species will not be decreased.

The property covered by the Permit is also subject to the Comanche Canyon Ranch Extraterritorial Jurisdiction Planned Unit Development, established by City of Austin Ordinance No. 041129-43, as amended, which dictates the application of City of Austin land development regulations to the property (“PUD”). Area 3 and 4 in the PUD are two of four tracts initially proposed for commercial and residential development under the Permit, identified as Tracts 1 and 2 on Figure 2 of the HCP. Tract 2 in the Permit, Area 3 in the PUD will be referred to herein as Area 3; Tract 1 in the Permit, Area 4 in the PUD will be referred to herein as Area 4. The raw water pump station is proposed to occupy portions of Area 3 and a portion of the proposed water treatment plant is proposed to occupy Area 4. The balance of the water treatment plant will be constructed on property located outside the area covered by the Permit.

The Permittee has prepared this Technical Memorandum in order to describe fully the requested amendment to the Permit and to provide a detailed analysis of all factors relevant to the Service’s consideration of the Permittee’s request for such amendment. This Technical Memorandum includes a description of the activities proposed to be covered by the amendment, along with the measures being incorporated into those activities to avoid and minimize impacts to listed species and the human environment, an analysis of the potential impacts of those activities on species listed under the ESA in relation to impacts authorized under the Permit, an analysis of the potential impacts of those activities on the human environment, and a justification for the proposed minor amendment.

DESCRIPTION OF ACTIVITIES PROPOSED BY THE CITY

The City of Austin – Austin Water Utility (AWU) is currently developing a new water treatment plant in north-central Travis County with Lake Travis as the raw water source. The plant will be built in phases, ultimately planned to reach a capacity of 300 Million Gallon per Day (MGD) or more. **Exhibit No. 1** shows the facilities location relative to its originally-planned location in the Bull Creek watershed. This plant will be the City's fourth water treatment plant and as such, has been named Water Treatment Plant No. 4. Preliminary design is currently underway and final design for the facility is expected to begin in July 2008. The development of the Water Treatment Plant No. 4 project consists of four basic components: the raw water intake on Lake Travis, the raw water pump station, the water treatment plant facilities, and the finished water distribution system. (Water Treatment Plant No. 4 and all its components will be collectively referred to herein as WTP4.)

The City had previously planned and permitted a site for its water treatment plant in the environmentally sensitive upper Bull Creek watershed, see **Exhibit No. 1**, referred to herein as the Bull Creek site. With growing concern over the impact of the plant on the Bull Creek area and potential species impacts, the City relocated WTP4 to the Comanche Canyon site.

The raw water pump station is proposed to occupy portions of Area 3. A portion of the proposed water treatment plant is proposed to occupy Area 4. These two areas were originally planned for residential development as part of the Comanche Canyon development, which includes other development areas and a preserve area as shown in **Exhibit No. 2**. The City of Austin has purchased Area 4 for the water treatment plant and is in the process of obtaining Area 3 for the raw water pump station.

Construction of the raw water pump station will consist of the excavation of the raw water tunnel access shafts, the raw water pump station buildings, parking areas, access drives, perimeter fence, and storm water facilities. The initial phase of construction will provide one building with a pumping capacity of 50-MGD. The second phase of construction will occur in the future, and include a second building housing a pumping capacity of 100-MGD. Ultimately, the raw water pump station capacity will be increased to 300-MGD or more either through construction of an additional pump station or an increase in capacity of the two existing pump stations.

The pump station consists of a building housing the mechanical, electrical, plumbing, and HVAC equipment necessary to pump the raw water to the treatment plant. Additionally, a water quality pond and detention facility will be used to treat run-off from the building and various parking structures. The storm water run-off will then be discharged into the existing road side swale.

Exhibit No. 3 shows the planned facilities and the approximate area required to fully develop the site for those facilities.

Operation of the raw water pump station requires minimal operator intervention. The pumps are controlled from the water treatment plant site, with no employee present at the pump stations on a regular basis. However, periodic maintenance of equipment will be required as will routine site visits to verify operation of the facility.

A portion of the water treatment plant lies in Area 4. The water treatment plant is connected to the raw water pump station via an underground transmission main. The initial phase of construction will consist of the excavation of the water treatment facilities, the access roads, various pump stations, storm water controls features, and distribution lines transporting finished water out to the City's distribution system. **Exhibit No. 3** shows the facilities to be constructed in Area 4 of the water treatment plant site. A brief description of each follows:

- Facility A - Main Electrical Building: This building will contain the primary electrical power supply equipment for distributing power for WTP 4. The building will be at grade with underground electrical conduits entering and exiting the building. The building will contain heating, air conditioning, and ventilation (HVAC) equipment, some of which may be installed on the outside of the building.
- Facility B - Dewatering Building: This building and its future expansion will contain centrifuges and associated equipment for dewatering the solids generated through the treatment process. Residuals hauling trucks will pull into the building, and the dewatered residuals will be dropped into the trucks from an elevated hopper tank. This building will be constructed at grade and will include outside HVAC equipment.
- Facility C - Residuals Storage: These tanks will store solids generated in the gravity thickeners. Secondary containment will be constructed around the tanks to contain potential leakage. Pumps in Facility B will be used to recirculate solids in the tanks and also pump them to the centrifuges.
- Facility D - Gravity Thickeners: This facility is used to concentrate the solids received from the Upflow Clarifiers located on the portion of the WTP 4 site outside Area 4. The unit will be an open, circular basin with a center-driven rake mechanism. The unit will be constructed partially underground.
- Facility E - Clearwells: The clearwells are used to store filtered water prior to distribution to the water system. They are large, concrete basins that are covered. Ultimately, they will be capable of storing up to 30 million gallons of water. Their depth could be up to 30 feet, potentially requiring up to 30 feet of excavation.
- Facility F - Tunnel Access Shaft: Shafts will be constructed to connect the above-ground piping from the finished water pump station to the distribution transmission mains that will be constructed in tunnels under the Edwards Formation to transmit finished water to the distribution system. These shafts could be around 40 feet diameter.
- Facility G - Finished Water Pump Station: This building will house the pumps used to convey water to the distribution system. Additionally, pumps within the building will be used to backwash the filters, which are located outside Area 4. The building will be constructed partially below grade and will include externally mounted HVAC equipment.

While the current configuration includes the above facilities within Area 4, the final configuration of the WTP 4 facilities could be modified as final design progresses in response to site conditions or other factors. Potentially facilities that could be relocated into Area 4 include the Upflow Clarifiers and the UV Disinfection building.

WTP 4 requires operation on a 24-hour, 7-days/week basis. At any time during the day or night, WTP 4 will be monitored/operated by a small number of individuals. Normal operation of the treatment facilities will be automatic, but operator intervention is often required. In addition to the daily operation of the facility, routine and/or periodic maintenance activities will be conducted to maintain the City's equipment in operating condition.

Phase one for the raw water pump station and treatment plant facilities will be constructed in multiple contracts over several years. Construction activities are projected to occur as follows:

- Treatment Plant Fence Construction. This project will include construction of a perimeter fence around the treatment plant site. It is tentatively planned to begin in November 2008 and require four to six months to complete.
- Pump Station Clearing, Excavation, and Stormwater Pond Construction. This project will include clearing of vegetation, excavation of the site down to the finished grade level for the pump building, and construction of stormwater facilities. It is tentatively planned to begin in October 2009 and require about one year to complete.
- Treatment Plant Clearing and Stormwater Pond Construction. This project will include clearing of vegetation and construction of stormwater facilities. It is tentatively planned to be completed at the same time as the pump station stormwater construction.
- Pump Station Facilities Construction. This project will include construction on Area 3 of the below ground facilities, a tunnel access shaft, the pump building, and associated appurtenances. It is tentatively planned to begin in February 2011 and require about two and a half years to complete.
- Treatment Plant Facilities Construction. This project will include construction of the complete treatment plant facilities, including those in Area 4. It is tentatively planned to begin in November 2010 and require about three years to complete.
- Treatment Plant Landscaping Installation. This project will include landscaping and sprinklers for designated areas within the treatment plant site. It is tentatively planned to begin in December 2013 and require about six months to complete.

Impact Avoidance Measures

As part of the City's proposed activities, the City has developed numerous environmental compliance measures designed to avoid and minimize potential adverse environmental effects. Among such measures relevant to the proposed amendments to the Permit are the following:

Vegetation

Facilities will be clustered within the tract. As opposed to the commercial/residential uses authorized under the Permit, the clustering of WTP4 facilities will result in large areas of native vegetation left undisturbed.

Storm Water

Best management practices to address storm water and construction site runoff will include the following measures.

Environmental Commissioning (EC) The City has implemented an EC plan that provides review of environmental protection issues by staff from the City's Watershed Protection and Development Review Department (WPDRD). WPDRD staff also has access to an independent consultant as a technical resource on environmental and water treatment engineering issues. The EC consultant reports to WPDRD rather than the AWU and is independent of AWU project staff and consultants. The EC process includes review of all environmental protection issues to ensure the City's environmental protection goals are met during design, construction, and operation of all components of the plant. This is a far greater level of environmental review and oversight than would have occurred for the permitted project.

Efficient Clearing and Grubbing Clearing of vegetation will be minimized to the extent practicable. Areas of clearing will be designated during the design phase and marked clearly on the ground during construction. To the extent practicable, large trees will be left in place.

Limit Soil Exposure Construction activities will be managed to limit exposed soils by phasing construction to keep unstabilized, disturbed areas to the minimum necessary at any one time. Each phase of construction will be temporarily or permanently stabilized prior to initiating disturbance in the next phase of construction. After the initial clearing, disturbed areas will be temporarily stabilized to the extent practicable. The remaining sequences of work will disturb soil only where necessary.

Protect Streams Tributaries to Bullick Hollow are susceptible to sedimentation and will be the focus of water quality protection measures. To the extent practicable, vegetation along these corridors will be maintained in its native state.

Install and Maintain Structural Best Management Practices (BMP's) Some of the BMP's to be used on the project include using temporary controls such as silt fencing, rock berms, temporary swales, mulching, and other temporary controls. Permanent controls such as water quality and detention ponds, grassy swales, vegetated strips, velocity control devices at outfall locations, rainwater harvesting, and other techniques will be implemented. These temporary and permanent controls will reduce, minimize or eliminate potential impacts to wetlands, water resources, and water quality. Proper installation, operation and maintenance of BMP's will follow City of Austin standard practices from the City's Environmental Criteria Manual.

Integrated Pest Management Plan (IPM) An IPM plan will be developed and implemented throughout the WTP4 site, including Areas 3 and 4. This plan will utilize non-toxic or least toxic alternatives for control of insect and plant pests. The plan will also require minimizing use of petroleum based fertilizers and encourage the use of mulch, compost, and other natural alternatives in a manner that prevents increased loading of nutrients in stormwater runoff.

Hazardous Materials Prior to construction, a plan will be developed to address the safe handling, storage, treatment, and/or disposal of hazardous materials that are brought onto the site, both during construction and operation of the treatment facility. The Hazardous Materials Management Plan will be completed in accordance with all federal, state, and local requirements. The Plan will include a procedure for personnel training, addressing management and response to hazardous waste situations, and a contingency plan for any spills or releases, including

response and/or containment procedures and reporting requirements. This will be a particular area of focus for the City's Environmental Commissioning Team.

Karst Features

If the City encounters a karst feature, the City will comply with all provisions in the Permit as well as any federal, state, and local state regulations.

Golden-Cheeked Warbler

The City will comply with all provisions in the Permit as well as any federal, state, and local regulations regarding the Golden-Cheeked Warbler.

Noise

Reasonable measures will be taken to avoid unnecessary noise, including locating mechanical equipment behind concrete or masonry walls on the portion of the facility furthest from the preserve. Such measures should be appropriate for the normal ambient sound level in the area during working hours. All construction machinery and vehicles shall be equipped with practical sound-muffling devices and operated in a manner to cause the least noise consistent with the efficient performance of the work. Additionally, the Contractor shall be required to meet applicable conditions of the Federal Fish and Wildlife Permit relative to construction activities.

Air

Excavating, drilling and tunneling activities will be monitored for the production of excessive dust. Watering will be used to control dust and prevent off-site migration during construction including the watering of haul roads and, as necessary, the spraying of equipment and work areas during excavation activities.

DESCRIPTION OF AFFECTED ENVIRONMENT

Vegetation

The description of existing vegetation in the Permit environmental assessment is generally the same as the vegetation in Areas 3 and 4.

Wildlife

The description of existing wildlife resources in the Permit environmental assessment is generally the same as the wildlife resources in Areas 3 and 4.

Listed, Proposed, and Candidate Species

A description of the endangered golden-cheeked warbler (GCWA) and listed karst invertebrate species is provided in the Permit and is therefore not restated here. As discussed in the Permit,

no rare plants have been found on any portion of the Comanche Canyon property and therefore will not be discussed or analyzed further. The endangered black-capped vireo and candidate Jollyville Plateau salamander are not discussed in the Permit but are considered in this document.

Black-capped Vireo - The black-capped vireo (BCVI), *Vireo atricapilla*, was proposed for listing on December 12, 1986 (51 FR 44808). On October 6, 1987, the species was designated as endangered in the entire breeding range in the United States where it has been known to occur: Kansas, Oklahoma, and Texas (52 FR 37420-37423). In addition, the BCVI breeds and winters in Mexico. The BCVI has a Service recovery priority of 2C, which indicates a species with a high degree of threat that is in conflict with construction or development projects or other forms of economic activity and has a high potential for recovery (USFWS 1991). Primary threats include a reduction in the breeding range, brown-headed cowbird brood parasitism, habitat loss and fragmentation, and the deterioration of habitat through the control of natural processes, particularly fire (USFWS 1991).

The BCVI typically begins to arrive in central Texas in early March and generally nests between April and early August (Grzybowski 1995). During the breeding season, BCVIs commonly nest in early successional, scattered hardwoods that have a dense understory of shrubs extending to the ground and spaces between thickets and clumps of scrubby vegetation. The species constructs its nests about one to six feet (0.3 to two meters) from the ground. Preferred nesting habitat typically has a low density and cover of Ashe juniper, although it is often one component of the BCVI's habitat (Campbell 1995). This habitat type most frequently occurs on rocky substrates with shallow soils, in rocky gullies on the edges of ravines, and on eroded slopes (USFWS 1991). BCVIs may live for more than five years, and usually return year after year to the same nesting territory (Campbell 1995), although they have also been known to colonize new areas (DLS Associates 1990). The birds begin to migrate to wintering grounds on Mexico's western coast in July and are gone from their Texas range by mid-September (Campbell 1995).

Populations of the BCVI are present in a number of localities in Texas, particularly on the Lampasas Cut Plains and Edwards Plateau. The eastern and southern edges of the range closely follow the Balcones Escarpment from Waco (McLennan County) to Brackettville (Kinney County). The range is likely discontinuous across the Llano Uplift and deterioration of the BCVI populations may be extensive, particularly from north-central Texas south to the San Antonio region (Bexar County). Fort Hood (Bell and Coryell counties) supports the largest known population. In 2005, it was estimated that over 8,000 male BCVIs were present on Fort Hood (95 percent confidence interval 6,196 to 10,593) (Chimprich 2005).

Travis County is on the eastern edge of the BCVI's range, and populations tend to be in small, dispersed groups. The Vireo Research Area/Wild Basin west of Loop 360 historically supported the largest colony of BCVIs (over 30 males during the 1980s), but numbers declined in the 1990s, and no BCVIs have been recorded at that site in recent years. Other groups have been found in the vicinity of RM 620 from the Four-Points area (intersection of RM 620 and RM 2222) south to Mansfield Dam, along Comanche Trail, along Bullick Hollow Road, along a ridgetop southeast of RM 2769 (Vireo Ridge), and east of Hwy 71 (Vireo Hill). USFWS (1996) provides a more complete description of BCVI occurrence and status in Travis County. Since 2000, annual Travis County BCVI populations have been estimated to be less than 30 males,

with small groups on and adjacent to the Cortaña property (3-5 males) along RM 620 south of Four-Points and on Vireo Ridge (12-21 males), and incidental sightings in other parts of the Balcones Canyonlands Preserve (BCP) (BCP 2001-2008).

No known BCVI or habitat occur on or adjacent to Area 3 or Area 4. The closest known colony is about 1500 to 2000 feet south of Area 4 on the Cortaña and adjacent Riverplace property (along RM 620 south of Four-Points), which is further separated from Areas 3 and 4 by a major roadway (RM 620). Following active habitat manipulation on the upland portions of Cortaña and adjacent Riverplace properties in 1995, BCVIs began nesting in these areas again in 2000, and 3-5 males have consistently been found there each year since (BCP 2001-2008). Due to the distance from Areas 3 and 4 and existing effects of RM 620 (traffic, roadway noise), no impacts to the BCVIs on the Cortaña or Riverplace properties are anticipated. Because no impacts to the BCVI are anticipated, it is not discussed under Environmental Consequences.

Jollyville Plateau salamander - The Jollyville Plateau Salamander (JPS), *Eurycea tonkawae*, is a rare aquatic salamander found in wet caves and spring-fed streams in the Northern Edwards Aquifer northwest of Austin, Texas. Its range includes nine creek watersheds: Brushy, Bull, Buttercup, Cypress, Lake, Long Hollow, Shoal, Walnut, and West Bull. Spring pools, spring runs, and riffles dominated by spring flows provide the ideal surface habitat. Surface populations of JPS are typically found under loose rock substrates that are free of sediment and may also be found in stream leaf litter and aquatic plants. The JPS also inhabits subsurface habitats, as indicated by their re-emergence from springs that begin to flow after dry spells and anecdotal evidence suggesting that egg deposition occurs underground. Because this species remains aquatic throughout its life, it depends on the quality and quantity of groundwater for its survival. It is typically found in clean, clear, flowing water that has a narrow temperature range (approximately 18-21°C) and a mostly neutral pH (Davis et al. 2001, Bowles et al. 2006).

The JPS is threatened by rapid expansion of urban development throughout its limited range. Significant negative trends in JPS numbers have been documented at four of nine long-term monitoring sites, and JPS with deformities have been found at two sites (O'Donnell et al. 2006). All of these sites occur downstream of areas where the recharge zone and creek headwaters have been developed. In June 2005, the Save Our Springs Alliance petitioned the USFWS to add the JPS to the list of threatened or endangered species. On December 13, 2007, the USFWS made a 12-month finding which stated that listing the JPS as endangered is warranted but precluded due to other listing priorities (72 FR 71040-71054).

The Permit did not address the JPS, which at that time had not been formally described nor designated as a candidate for listing. Since that time, new information about the status of the JPS has become available. Due to concerns about potential impacts of building a water treatment plant near several large populations of JPS downstream of the former plant site in the Bull Creek watershed, the City of Austin spent considerable time and resources relocating WTP4 to an alternate site. During the search for an alternate site, City of Austin staff conducted presence-absence surveys on the Comanche Canyon property in November 2007, during which no JPS were found. There were several small springs and intermittent flow throughout the creeks on the property, which are part of the Cypress Creek watershed. However, there was little suitable surface substrate (loose rock substrates free of sediment), and much of the bedrock was bare or

covered with what appeared to be sediment from historic logging activities. JPS are found in other tributaries of Cypress Creek north of Bullick Hollow Road, so this may represent the limit of their distribution in this area, or historic land use (potentially from historic logging activities) may have eliminated or reduced their habitat on the Comanche Canyon property. Because the JPS has not been found on the property, no negative impacts are anticipated. However, relocating WTP4 to the Comanche Canyon property will benefit water quality, water quantity, and JPS downstream of the former site on upper Bull Creek (see Environmental Consequences, Indirect Impacts).

Wetlands

The Permit environmental assessment describes wetlands as occurring on the 446-acre Comanche Canyon site but outside the development zone. A field investigation by TCB, Inc. in 2008 of Area 4 and a remote reconnaissance by TCB, Inc. in 2008 for Area 3 were performed to identify wetlands on the respective sites. Prior to the site visit, aerial photographs and the U.S. Geological Survey (USGS) topographic quadrangle map (*Jollyville, Texas*) were used to identify potential areas of concern on the site. These areas included visible streams appearing on the aerial photograph and/or quadrangle map, and topographically defined drainage ways. In addition, National Wetland Inventory (NWI) Maps and the *Soil Survey for Travis County, Texas* (1974) were reviewed for potential wetlands and occurrence of hydric soils on the property. The field investigation resulted in no wetlands being indentified on Area 4. The result of the remote reconnaissance for Area 3 showed no potential wetlands. The recent investigations found no wetlands other than those described in the Permit.

Geology

The description of geology in the Permit environmental assessment is generally the same as the geology in Areas 3 and 4.

Soils

The description of soils in the upland areas in the Permit environmental assessment is generally the same as the soils in Areas 3 and 4.

Land Use

The description of land use in the Permit environmental assessment is generally the same as the land use in Areas 3 and 4.

Water Resources

The description of water resources in the Permit environmental assessment is generally the same as the water resources in Areas 3 and 4.

Air Quality

The description of air quality issues in the Permit environmental assessment is generally the same as the air quality in Areas 3 and 4. In addition, the site is located in Travis County, Texas which is in attainment of all National Ambient Air Quality Standards (NAAQS). However, because monitored ozone levels in the Austin areas are very close to the 8-hour standard, Travis County, along with Bastrop, Caldwell, Hays, and Williamson counties, entered into an Early Action Compact on December 18, 2002 to develop and implement an emissions reduction plan to assure attainment of the 8-hour ozone standard by 2007 and maintenance through 2012. Changes in future attainment standards could affect attainment status.

Water Quality

The description of water quality in the Permit environmental assessment is generally the same as the water quality resources in Areas 3 and 4.

Cultural Resources

The description of cultural resources in the Permit environmental assessment is generally the same as the cultural resources in Area 3. No sites were discovered in the initial survey; however, later archeological investigations for the current project resulted in two sites being identified on the site that includes Area 4. Neither of these sites was deemed eligible by the Texas Historical Commission for inclusion in the National Register of Historic Places or for listing as State Archeological Landmarks per concurrence provided on May 8, 2008.

Socioeconomic Environment

The site is located in north-central Travis County. According to Census 2000, the county has experienced consistent growth over the past 30 years, growing from 295,516 residents in 1970 to 812,280 residents in 2000, at an average annual growth rate of 3.4 percent. The Capital Area Metropolitan Planning Organization (CAMPO) planning area encompasses all Travis, Hays and Williamson Counties. The population within the CAMPO boundary was approximately 1.16 million in 2000, and is expected to reach 2.75 million by 2030.

ENVIRONMENTAL CONSEQUENCES

Direct Impacts

Vegetation

Direct impacts to vegetation in Areas 3 and 4 will be less than impacts considered by the Service because facilities will be clustered within the tracts. As opposed to the commercial/residential uses authorized under the Permit, the clustering on WTP4 facilities will result in large areas of native vegetation left undisturbed.

Wildlife

Since less vegetation will be cleared, more resources will be available to wildlife in Areas 3 and 4; therefore, the proposed amendment will have less direct impact on wildlife.

Listed, Proposed, and Candidate Species

Golden-cheeked Warbler --Area 3 – Area 3 is not depicted in the Permit as GCWA habitat, but it does contain oak-juniper woodlands that will be cleared. The amendment will result in a reduction of direct impacts to the woodlands in Area 3 of about four and a half acres, from approximately 12 acres to seven and a half acres. **Exhibit No. 3.** Thus, it is anticipated that the proposed amendment would result in less direct effects than previously anticipated, would not increase in the level of take authorized by the permit, nor reduce the amount of preserve land (336 acres) identified in the Permit.

Golden-cheeked Warbler --Area 4 – The amount of habitat directly affected by clearing and development activities in Area 4 will be limited to the currently approved development envelope, approximately 20 acres. **Exhibit No. 3.** Thus, it is anticipated that the proposed amendment would result in less direct effects than was previously anticipated, would not increase in the level of take authorized by the Permit, nor reduce the amount of preserve land (336 acres) identified in the Permit.

Karst Invertebrates --Area 3 - The footprint of the pump station in Area 3 (approximately 7.5 acres) would be less than the previously proposed commercial/residential development (approximately 12 acres). A karst feature survey was conducted on the Comanche Canyon property in 1999, finding no caves, sinkholes, or other visible karst features (SWCA 1999). The pump station would be located in the Walnut Formation, which is below the geologic formation (Edwards Formation) where the listed species are generally found. If additional structures are built on the remainder of the seven and a half acres, a portion of this area occurs along the edge of the Edwards Formation. However, Area 3 is located below the 1010-foot contour interval, which appears to be less conducive to the formation of caves inhabited by listed species (Mike Warton & Associates 1998, HVJ Associates 2008, (USFWS 2008). Because Area 3 lies below the zone of known endangered karst species habitat, no direct impacts that are unaccounted for in the Permit are anticipated.

Karst Invertebrates --Area 4 - The proposed development footprint for Area 4 will remain within the currently approved 20-acre development envelope. Two karst feature surveys have been conducted on the property, finding no caves, sinkholes, or other visible karst features (SWCA 1999, Zarker 2008). Direct impacts would be expected to occur only if an unknown void occupied by listed species were found during excavation.

Since the property has been extensively surveyed for karst, the likelihood of encountering an extensive void at the surface is small, but as with any development, additional karst features could be intersected at excavated depths. The Permit did not discuss the depth of excavation, but the PUD authorizes a maximum excavation depth of eight feet for the commercial/residential development, which under the proposed amendment will be increased to 30 feet. Given the amount of disturbance anticipated from excavating to eight feet, the additional excavation depth

is not expected to significantly increase the likelihood of finding endangered species habitat. However, as contemplated in the Permit, unknown subsurface voids may be encountered. Further, the western half of Area 4 is located below the 1010-foot contour interval, which appears to be less conducive to the formation of caves inhabited by listed species (Mike Warton & Associates 1998, HVJ Associates 2008, USFWS 2008). In the unlikely event that a void was found during excavation, the City of Austin would follow the protocols outlined in the Permit.

Jollyville Plateau salamander --Area 3 – There are currently no known JPS locations along the portion of Cypress Creek on or below the Comanche Canyon property; no direct impacts are anticipated.

Jollyville Plateau salamander --Area 4 – There are currently no known JPS locations along the portion of Cypress Creek on or below the Comanche Canyon property; no direct impacts are anticipated.

Wetlands

No wetlands were identified in Areas 3 and 4. Therefore, the proposed amendment will have no direct effects on wetlands.

Geology and Soils

Areas proposed for development in Areas 3 and 4 are underlain by the basal member of the Edwards Formation and the Walnut Formation. The location of the pump station on Area 3 will require the construction of an access shaft for the raw water tunnel connecting the raw water intake in Lake Travis as well as excavation of a tunnel portal for the raw water transmission main to the treatment plant. Development of the pump station and access shaft is proposed on the lower elevations of the site to avoid construction activity and excavation within the Edwards Formation. Spoil materials from the excavation activities will be transported off-site and disposed of in an appropriate manner.

Other areas proposed for the development envelope of Areas 3 and 4 are underlain by the Edwards Formation. Construction will require some drilling, excavation and tunneling to level the site and construct the raw water tunnel and shaft. Increasing excavation depths beyond that in the Permit will result in greater disturbance of the geology and create some level of increased risk of intersecting subsurface voids. However, surface surveys did not identify any surface karst features and borings did not identify any unexpected void development in the plant area. The City of Austin intends to maintain the same void evaluation and mitigation measures as described in the current permit and therefore, no significant additional impact is anticipated.

Soil disturbances of Areas 3 and 4 will be less than impacts considered by the Service because facilities will be clustered within the tracts. As opposed to the commercial/residential uses authorized under the Permit, the clustering on WTP4 facilities will result in large areas of soil left undisturbed. Grading will comply with applicable City of Austin erosion control regulations.

Land Use

The impact to land use on Area 3 will be essentially the same as that stated in the Permit. The City will construct the pump station on Area 3 in compliance with the architectural standards of the neighboring Comanche Canyon residential subdivision.

The impact to land use on Area 4 will not be materially different than other large scale commercial uses in the vicinity. Part of the treatment plant site immediately adjacent to Area 4 contains a large power line and there are other even larger power lines in the area. Additionally, several commercial developments are located in the general area, including a large grocery store at the northeast corner of RR 620 and RM 2222.

Water Resources

There will be less impervious cover on Area 3 than currently contemplated under the Permit, which should lessen impacts to on-site recharge. Due to the reduction in impervious cover on Area 3 and the very limited water resources on-site or nearby the effects on water resources is expected to be minimal.

There will be more impervious cover on Area 4 than currently contemplated under the Permit. Any impact this additional impervious cover places on water resources is offset by the use of stormwater management techniques. (See Impact Avoidance Measures)

Air Quality

Development of WTP4 in Areas 3 and 4 is expected to result in a decrease in the number of gas-powered vehicles on the property from that stated in the Permit, which may result in some improvement in air quality. Construction of WTP4 could result in additional dust due to the greater depth of excavation. However, significant controls will be in place to control this. Therefore, the proposed amendment is not expected to significantly impact Air Quality.

Water Quality

Impacts to water quality may be less than those originally contemplated in Area 3 because the level of impervious cover is reduced, vehicle trips are reduced, and an Integrated Pest Management plan to minimize or eliminate pesticide and fertilizer use will be implemented.

The Austin City Council has adopted a policy requiring that all new City facilities implement enhanced water quality controls beyond what would otherwise be required under City Code. The enhanced controls (see Impact Avoidance Measures) are expected to mitigate the increase in impervious cover on Area 4. Reduced vehicle trips and implementation of an Integrated Pest Management plan to minimize or eliminate pesticide and fertilizer use will also minimize impacts to water quality.

As described above, the proposed amendment is not expected to significantly impact water quality.

Cultural Resources

The impact to cultural resources is essentially the same as that stated in the Permit. Therefore, the proposed amendment is not expected to impact cultural resources.

Socioeconomic Environment

The potential impacts to socioeconomic environment are not expected to be materially different from those anticipated under the Permit.

Indirect Impacts

Vegetation

The indirect impacts to vegetation from Areas 3 and 4 are likely to be less than that anticipated in the Permit because the WTP4 project will be landscaped primarily with native vegetation. This should limit or prevent impacts from invasive species that would likely be introduced by residential development.

Additional clearing of vegetation off-site for WTP4 will be offset by preservation of the Bull Creek site.

Wildlife

The indirect impacts to wildlife from Areas 3 and 4 are essentially the same as that stated in the Permit. No buildings with significant glass exterior surfaces, which can cause mortality from bird strikes, would be built on this site. No additional indirect impacts to wildlife are anticipated.

Listed, Proposed, and Candidate Species

Golden-cheeked Warbler --Area 3 --Additional dust could be generated during construction from the increased excavation depth, but significant controls are planned to minimize this effect (see Impact Avoidance Measures). Other indirect effects are expected to be eliminated or reduced with the change from a commercial/residential development to a raw water pump station, including noise (plant is generally quiet), traffic (significant reduction), people (significant reduction), and pets (will not be allowed). Only native plants will be used for landscaping, and an IPM plan will be implemented to avoid introducing invasive plants and runoff of fertilizers and pesticides. No buildings with significant glass exterior surfaces, which can cause mortality from bird strikes, would be built on this site. Thus, no additional negative indirect impacts are expected to occur.

Relocating WTP4 to Areas 3 and 4 will provide a net benefit by protecting GCWA habitat on the Bull Creek site from both direct impacts (102 acres) and indirect impacts (per Service practice, approximately 250 feet from the perimeter of the 102-acre footprint). Thus, with the proposed WTP4 relocation, the indirect impacts addressed for the GCWA are expected to be significantly less than those anticipated in the Permit.

Golden-cheeked Warbler --Area 4 --Additional dust could be generated during construction from the increased excavation depth (will increase from 8 to 30 feet), but significant controls are planned to minimize this effect (see Impact Avoidance Measures). Other indirect effects are expected to be eliminated or reduced with the water treatment plant, including noise (plant is generally quiet), traffic (significant reduction), people (significant reduction), and pets (will not be allowed). Only native plants will be used for landscaping, and a significant IPM plan will be implemented to avoid introducing invasive plants and runoff of fertilizers and pesticides. No buildings with significant glass exterior surfaces, which can cause direct mortality from bird strikes, would be built on this site. Clarifiers will contain uncovered pools of chlorinated (about 2 mg/L) water, which could attract grackles (*Quiscalus* sp.) and other potential predators, but this is not expected to have a more significant effect than swimming pools in a residential development.

Some chemicals typically used in the water treatment process will be stored off-site. The likelihood of a chemical release that would be harmful to the GCWA is remote.

Relocating WTP4 to the Comanche Canyon site will provide a net benefit by protecting GCWA habitat on the former site in upper Bull Creek from both direct impacts (102 acres) and indirect impacts (per USFWS protocol, approximately 250 feet from the perimeter of the 102-acre footprint).

Considering the above, the indirect impacts addressed for the GCWA are expected to be significantly less than those anticipated in the Permit.

Karst Invertebrates --Area 3 -Relocating WTP4 to the Comanche Canyon property will provide permanent protection of two caves (Down Dip Sink and Garden Hoe Cave) on the former site in upper Bull Creek, both of which contain the Tooth Cave ground beetle. A third cave (Disbelievers Cave), which also contains the Tooth Cave ground beetle, is located along the former WTP4 property boundary. Relocating WTP4 will protect large areas around these features and avoid direct and indirect impacts. Potential indirect effects that are no longer going to occur from developing the former WTP4 site could have included a reduction in the surface and subsurface drainage basin, natural vegetative buffers, cave cricket populations, and other nutrient inputs. Thus, with the proposed WTP4 relocation, the indirect impacts addressed for the karst invertebrates are expected to be significantly less than those described in the Permit.

Karst Invertebrates --Area 4 - No known karst features with listed species have been found on the Comanche Canyon property.

Relocating WTP 4 to the Comanche Canyon property will provide permanent protection of two caves (Down Dip Sink and Garden Hoe Cave) on the former site in upper Bull Creek, both of which contain the Tooth Cave ground beetle. A third cave (Disbelievers Cave), which also contains the Tooth Cave ground beetle, is located along the former WTP4 property boundary. Relocating WTP4 will protect large areas around these features and avoid direct and indirect impacts. Potential indirect effects that are no longer going to occur from developing the former WTP4 site could have included a reduction in the surface and subsurface drainage basin, natural vegetative buffers, cave cricket populations, and other nutrient inputs. Thus, with the proposed

WTP4 relocation, the indirect impacts addressed for the karst invertebrates are expected to be significantly less than those described in the Permit.

Jollyville Plateau salamander --Area 3 – There are currently no known JPS locations along the portion of Cypress Creek on or below the Comanche Canyon property, so no negative indirect impacts are anticipated.

Relocating WTP4 from the original site to the Comanche Canyon property will protect a significant portion of the recharge zone in the upper Bull Creek watershed, which will provide net benefits to water quality, water quantity, and JPS populations on and downstream of the former WTP4 site.

Jollyville Plateau salamander --Area 4 – There are no known JPS locations along the portion of Cypress Creek on or below the Comanche Canyon property, so no negative indirect impacts are anticipated.

Relocating WTP 4 from the original site to the Comanche Canyon property will protect a significant portion of the recharge zone in the upper Bull Creek watershed, which will provide net benefits to water quality, water quantity, and JPS populations on and downstream of the former WTP4 site.

Wetlands

No indirect impacts to wetlands are anticipated as a result of WTP4 construction on Area 3. In Area 4, higher impervious cover than anticipated in the Permit has the potential to create additional impacts to springs and seeps in the nearby canyons by limiting recharge of stormwater. The potential impact will be minimized through the environmental commissioning plan (see Impact Avoidance Measures). Thus, the indirect impacts to wetlands are not materially different than anticipated in the Permit.

Geology and Soils

The indirect impacts to geology and soils are essentially the same as that stated in the Permit.

Land Use

No significant indirect impacts to land use are expected to occur as a result of the proposed action. Most of the properties adjacent to, or in the vicinity of Areas 3 and 4 are currently protected by the BCP. Two properties to the Southeast of Area 4 will be incorporated into the design of WTP4, see **Exhibit No. 1**. For other properties in the area that are developed, or planned for development, the proposed action will not change or impact those properties. The indirect impacts to land use are essentially the same as that stated in the Permit.

Water Resources

WTP4 will increase impervious cover above what would otherwise be allowed under the PUD or City regulations. However, WTP4 will include enhanced water quality controls that will provide

a greater level of stormwater treatment and control of off-site discharges. The potential impacts to water resources are not expected to be materially different from those anticipated under the Permit.

Air Quality

Development of WTP4 in Areas 3 and 4 is expected to result in a decrease in the number of motorized vehicles in the area from that stated in the Permit, based on the minimal human interface needed to operate WTP4, which may result in some improvement in air quality. No adverse indirect impacts to air quality are anticipated.

Water Quality

Development of WTP4 in Areas 3 and 4 is not expected to result in greater water quality degradation than that anticipated under the Permit. Reduction in impervious cover in Area 3 over the permitted development should reduce any water quality impacts by reducing stormwater volume and pollutant loading. Pollutant loading in Area 3 should be further reduced by the dramatically fewer vehicles that will be on-site as compared to the development anticipated in the Permit for this Area.

Planned increases in impervious cover in Area 4 are mitigated by enhanced stormwater management techniques that will include enhanced structural controls, rainwater harvesting, vegetated strips and other methodologies. Pollutant loading from a water treatment plant is expected to be dramatically less than the loading from a residential development due to the reduction in numbers of vehicles and vehicle trips. Pollutant loading in stormwater should be further reduced by the City of Austin's plan to implement an IPM plan that will eliminate or minimize fertilizer and pesticide use. No such plan was required under the permit. Due to these changes in on-site vehicles and pollution management the potential impacts to water quality are not expected to be materially different from those anticipated under the Permit.

Cultural Resources

The indirect impacts to cultural resources are essentially the same as that stated in the existing Section 10(a) Permit. No indirect impacts to cultural resources are anticipated.

Socioeconomic Environment

Development of WTP4 in Areas 3 and 4 will result in a decrease of the overall population than that stated in the Permit. The proposed action may also result in a decrease in supportive businesses such as retail stores, gas stations, and restaurant. There may also be a decrease in the demand for schools, road repairs, and other public services in the area.

Potential Induced Growth

Certain types of infrastructure development have been recognized to have indirect environmental effects by inducing growth and development. This is true, for example, with respect to some

highway interchanges. This has not, however, generally been recognized to be the case with respect to provision of water treatment capacity, particularly where raw water is not severely constrained and there are multiple potential purveyors of treatment capacity. Careful consideration has been given to whether the construction of WTP4 would induce growth and development such that the environmental consequences of that growth and development should be evaluated in connection with the proposed amendments to the Permit. While WTP4 will serve a rapidly urbanizing area, the water provided by the plant will not increase the likelihood, scale, pace, location, or environmental impacts of growth and development. Stated another way, the failure to construct WTP4 would not materially limit growth in the region. There is abundant raw water in the Highland Lakes available for treatment and there are multiple governmental and non-governmental parties capable, prepared, and planning to provide potable water. For example, the cities of Round Rock, Leander, and Cedar Park are currently planning a major water treatment plant in the region using raw water from Lake Travis. Similarly, the LCRA has the capability to plan and construct major water treatment facilities in the region. In fact, the LCRA has already constructed and operated such facilities to serve growth in the region, and have repeatedly indicated their willingness, as a matter of policy, to do so in the future. In short, it is reasonable to conclude that growth and development will continue in the region without regard to the construction of WTP4. On the other hand, it would not be reasonable to conclude that other potential suppliers would necessarily plan, construct and operate a water treatment plant with all the environmental safeguards described in this memorandum.

Moreover, even if one were to conclude that construction of WTP4 did have a growth inducing effect, the environmental consequences of that growth on resources at issue in this action are already largely being addressed through other regional planning efforts and regulation. The Balcones Canyonlands Conservation Plan in particular provides a reliable guide for the future impacts that growth in Travis County will have on listed species. That plan also provides significant mitigation of those impacts and WTP4 was considered and authorized in the plan. Williamson County is also in the latter stages of developing a regional habitat conservation plan. The region benefits from some of the most significant wild lands preservation and regional planning in an urban area in the country. Similarly, regulations of the City of Austin and other jurisdictions have a mitigating effect on the impacts of growth and development on a variety of resources.

Cumulative Impacts

The cumulative effects are not materially different from those anticipated under the Permit.

Climate Change

There is significant public concern regarding the impacts of climate change. The City of Austin recognizes that concern and therefore will design WTP4 to mitigate climate change impacts in the following ways:

- (1) By tapping into Lake Travis, the highest local water source, and locating the facilities in the northwest, it is projected that for the first phase, the corresponding reduction in greenhouse gas emissions is about 15,000 tons per year when compared to a similar facility supplied from Lady Bird Lake.

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- (2) The facility designs will be optimized to reduce greenhouse gas emissions and energy use. Specifically, compact layout of structures, recarbonation facilities, upflow clarifiers, filtration, ammonia feed systems, and premium efficiency motors throughout will be designed as sustainable components.
 - (3) The City of Austin has adopted a Climate Protection Plan, a citywide program with the goal to reduce significantly Austin's carbon footprint.

Climate change impact on the GCWA will be felt uniformly throughout the range of the species.

CONCLUSION

Based on the information and analysis presented and referred to in this Technical Memorandum, the requested amendments are appropriate and do not increase the permitted impacts on, nor decrease the mitigation for, the Covered Species under the Permit. In addition, the amendments are not expected to result in direct, indirect, or cumulative impacts to the human environment materially different from those considered in the Permit. Therefore it is appropriate that the Service process the request amendment as “minor” amendments to the Permit.

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EXHIBIT No. 1

VICINITY MAP

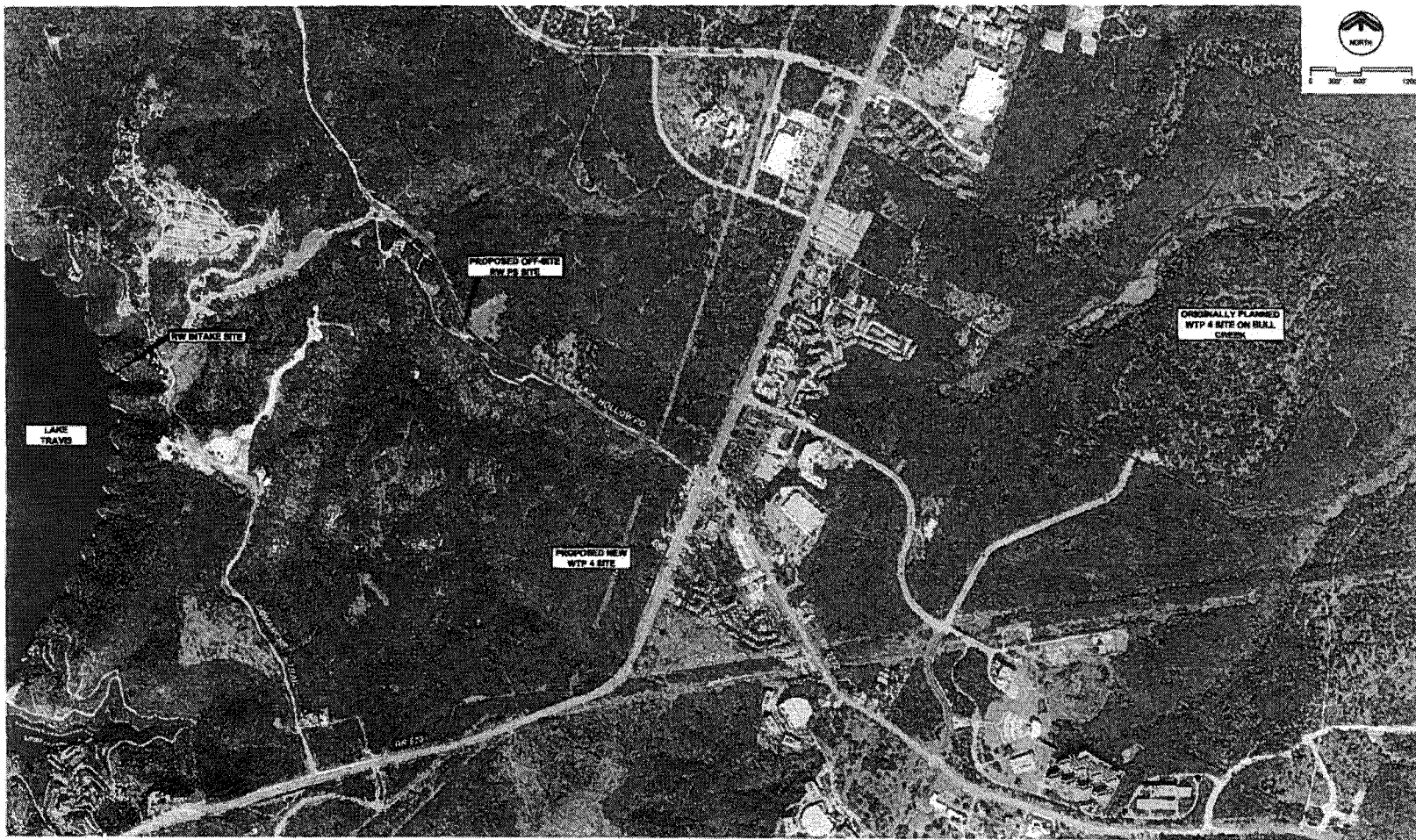
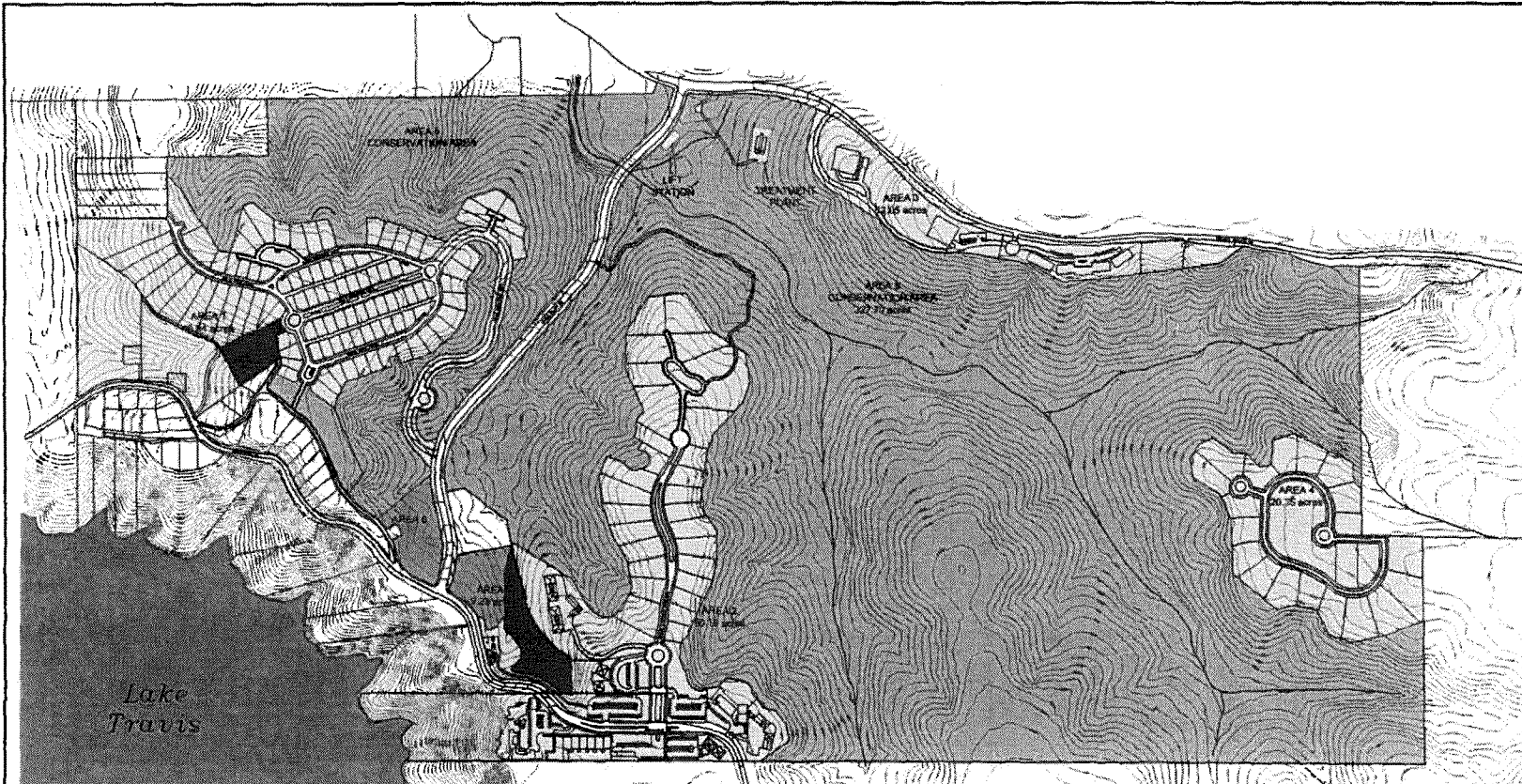


EXHIBIT No. 2

OVERALL PERMIT AREA



| COMANCHE CANYON RANCH 478.8 Total Acres | | |
|--|---|------------|
| AREA | LAND USE | ACREAGE |
| 1 | Residential: 80 Single Family Home Sites | 46.64 ac. |
| 2 | Residential: 30 Single Family Lots 24 Condo Units Commercial/Office: 5 Bldgs- 49,000 Sq Ft Total Restaurant: 2500 seats Retail: 40,000 Sq Ft Parking Structure: 350 spaces | 50.18 ac. |
| 3 | Residential: 2 Single Family Lots 40 Condo Units 24 Town Home Units | 12.05 ac. |
| 4 | Residential: 21 Single Family Lots | 20.35 ac. |
| 5 | Conservation Area Lift Station | 327.70 ac. |
| 6 | Vineyard (5.21 ac) Water Quality Re-irrigation (1.31 ac) Open Space (2.76 ac) | 9.28 ac. |
| | Right-of-way to be dedicated | 2.4 ac. |



1" = 600' HORIZ

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COMANCHE CANYON RANCH

REVISIONS

DATE
REVISION NO.
BY
CHKD
DATE
FILE NAME



10-8-89
97-28-43
N/A
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EXHIBIT No. 3

PROPOSED DEVELOPMENT AREA

